Nov. 4. 1872 20-385 Today

No. 2 C. J.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~226~~ 53

HENRY C. ROGERS, THOMAS S. ROGERS, C. ARNOLD WEAVER, AND THOMAS W. GARDNER, ET AL., APPELLANTS,

vs.

THE SCHOONER S. B. WHEELER, WILLIAM S. HILLES, JACOB S. WELDEN, ET AL., CLAIMANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED DECEMBER 4, 1872.

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No. 326.

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1*a* UNITED STATES OF AMERICA,
Massachusetts District, ss:

At a circuit court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Wednesday, the fifteenth day of May, in the year of our Lord one thousand eight hundred and seventy-two:

Before the honorable Nathan Clifford, associate justice, and the honorable John Lowell, district judge.

HENRY C. ROGERS ET AL., LIBELLANTS, appel'ants,
v.
THE SCHOONER S. B. WHEELER, JACOB S. Welden et al., claimants, appellees.
} In admiralty.

1*b* The transcript of the record of the district court of the United States is duly filed and entered here at the present term of this court, and is in the words and figures following, namely:

1 *Libel.*

UNITED STATES OF AMERICA,
Massachusetts District, ss:

At the district court of the United States, begun and holden at Boston, within and for the district of Massachusetts, on the second Tuesday (being the twelfth day) of September, in the year of our Lord one thousand eight hundred and seventy-one.

Before the honorable John Lowell, judge.

HENRY C. ROGERS ET ALS., LIBELLANTS,
v.
THE SCHOONER S. B. WHEELER.
} In admiralty.

This libel was filed in court on the 21st day of July, A. D. 1871, and is as follows, viz:

To the judge of the district court of the United States for the district of Massachusetts:

Henry C. Rogers and Thomas S. Rogers, both of the city and State of New York, copartners, C. Arnold Weaver and Thomas W. Gardner, copartners, late owners of the schooner Charles F. Beebe; Charles A. Maynard, late master of said schooner, Erastus Strickland,
2 late mate of said schooner, Jas. McLoclin, Geo. Scott, Antone Silvia, Robert Regan, James Butler, and David ———, late seamen on board said schooner, exhibit this their libel against the schooner S. B. Wheeler, of Wilmington, in the State of Delaware, now in the district of Massachusetts, in a cause of collision, civil and maritime; and thereupon the said libellants allege and articulately propound as follows:

First. That on the morning of the 18th of July, 1871, at about one o'clock, the said schooner Charles F. Beebe, a vessel of the burden of forty-one and thirty-two one hundredths tons, new measurement, being then tight, sta'nch, and strong, and in all respects properly manned and equipped, and proceeding on a voyage from Nova Scotia to said New York, with a cargo of fresh halibut on board, was run down and sunk by said schooner S. B. Wheeler, as more particularly set forth below.

Second. The place of the collision was in the Vineyard Sound, about

eight miles northeasterly from Gay Head. The wind at the time was northwest—a strong breeze; the night was clear. The said schooner Charles F. Beebe was sailing close-hauled on the wind on her starboard tack, with her lights, required by law, set as required by law, with an experienced and careful seamen on the lookout, and another at the wheel, when the green light of a vessel, which proved afterwards to be the said schooner S. B. Wheeler, was seen over the starboard bow of the said schooner Charles F. Beebe, and something more than a mile off. That said schooner Charles F. Beebe was kept on her course until it became apparent that the said schooner S. B. Wheeler had changed and was still changing her course to starboard, so as to make a collision inevitable, and until the said schooner S. B. Wheeler was within about one hundred or one hundred and fifty feet of said schooner Charles F. Beebe when the helm of the said Charles F. Beebe was put to starboard, as the only thing that could be done with any hope of escaping the collision or relieving the force of the blow. Under this change of helm, she had fallen off about two points, when the said schooner S. B. Wheeler struck her about amidships on her starboard side, cutting half way through her deck, and causing her to sink so suddenly that the crew had only time to escape with their lives; and said schooner, with all the property on board, became a total loss.

Third. That if said schooner S. B. Wheeler had kept on her
3 course the vessels would have passed each other in safety; and before she changed her course, there was no danger of a collision. The said schooner Charles F. Beebe could not go to starboard, when the lights of the S. B. Wheeler were first seen, because she was close-hauled; and when it became apparent that the S. B. Wheeler was about to run into her, she could not go to starboard and throw the wind out of her sails, on account of the proximity of the S. B. Wheeler, and also of another vessel there was a little farther off to windward.

Fourth. That everything was done on board the Charles F. Beebe that could be done to avoid the collision, and the same was caused wholly by the carelessness and neglect of the persons in charge of the S. B. Wheeler.

Fifth. That the value of the said schooner Charles F. Beebe was thirty-five hundred dollars; the cargo was the property of the above-named owners of said schooner, and the master and mate of said schooner, and was of the value of one thousand dollars. The books, nautical instruments, and clothes of the master, were of the value of one hundred and seventy-five dollars. The clothes and other property of the mate were of the value of seventy-five dollars, and of each of the seamen fifty dollars; in all, five thousand and fifty dollars; for which, compensation is sought in this suit.

Sixth. That all and singular the premises are true, and within the admiralty jurisdiction of this honorable court.

Wherefore, the libellants pray that process in due form of law may issue against such schooner S. B. Wheeler, her tackle, apparel, and furniture; and that this honorable court will pronounce for the damages aforesaid, and decree the same to be paid with costs; and for such other relief as justice shall require.

C. A. WEAVER & CO.,
By T. W. GARDNER.
H. C. ROGERS & CO.,
By attorney, THOS. W. GARDNER.
CHARLES A. MAYNARD,
For self and behalf of mate and crew.

JOHN C. DODGE, *Proctor.*

4 COMMONWEALTH OF MASSACHUSETTS,
County of Suffolk, ss:

JULY 21ST, A. D. 1871.

Then and there personally appeared the above-named Charles A. Maynard, and signed the foregoing libel in my presence, and thereupon made solemn oath that the statements therein contained are true.

Before me: Witness my hand and notarial seal at the time and place above set forth.

[SEAL.] CHAS. F. WALCOTT,
Notary Public.

Warrant and monition.

Thereupon, on said 21st day of July, A. D. 1871, by order of the judge, a warrant and monition issued, commanding the marshal to give notice to all persons concerned, that the foregoing libel had been filed, and that trial would be had thereon at a special district court, to be holden at the United States court-house, in Boston, in said district of Massachusetts, on Friday, the fourth day of August next, at ten o'clock a. m.; and to give said notice by advertising the same in the Boston Daily Advertiser, one of the public newspapers printed at said Boston, and by posting a copy of the same notice at the said court-house in Boston, ten days, at least, before said day of trial; and to take the said schooner S. B. Wheeler, her tackle, apparel, and furniture, into his custody; and to make due return of his doings.

And the marshal made return as follows, viz:

UNITED STATES OF AMERICA,
Massachusetts District, ss:

BOSTON, *July 21st*, 1871.

Pursuant hereunto, I have given notice to all persons concerned, that the libel within named has been filed, and that trial will be had thereon on the fourth day of August, by advertising the substance of the within monition in the Boston Daily Advertiser, one of the newspapers
5 printed in Boston, in said district, and by posting up a copy of the same notice in the United States court-house, in Boston, in said district, ten days before the day within named for trial: and on the twenty-first day of July, I took the within-named schooner S. B. Wheeler, her tackle, apparel, and furniture, into my custody.

ROLAND G. USHER,
U. S. Marshal.

Stipulation for costs and expenses.

On the twenty-sixth day of July, A. D. 1871, before this court personally appeared William S. Hilles, of Wilmington, in the district of Delaware, claimant of said schooner, and produced for sureties, John C. Alden, of Bridgewater, Mass., and George T. Clark, of Lynn, Mass. And the said Hilles, Alden, and Clark, submitting themselves to the jurisdiction of this court, bound themselves, their heirs, executors and administrators, jointly and severally, in the sum of two hundred dollars unto the said libellants, that the said Hilles, the claimant, should pay all costs and expenses which would be awarded against him in this suit, upon the final adjudication thereof, or by any interlocutory order, whether it be in this or any appellate court.

On said twenty-sixth day of July, A. D. 1871, the following claim was filed in court, viz:

Claim.

UNITED STATES DISTRICT COURT,
District of Massachusetts, ss:

June term, 1871.

And now comes William S. Hilles, of Wilmington, in the State of Delaware, and claims the schooner S. B. Wheeler, her tackle, apparel, and furniture, and says that he with Jacob S. Weldin, H. W. Bartram, John A. Harris, all of said Wilmington, George W. Churchman of New Castle County, in the State aforesaid, Peter W. Gamble, of Delaware County, Pennsylvania, and Edwin F. Miller and Nathaniel Horner, of Roadstown, in the State of New Jersey, are true and bona-fide owners of said schooner, and that no other person or persons are the
6 owner or owners thereof; and that the said William S. Hilles is duly authorized by said owners to make this claim in behalf of all.

Wherefore he prays that said schooner may be delivered to him upon his giving such stipulations therefor as the court may order.

W. S. HILLES.

G. A. SOMERBY,
L. S. DABNEY,
Proctors.

COMMONWEALTH OF MASS.,
County of Suffolk, ss:

JULY 26, 1871.

Subscribed and affirmed to before me, as being true according to his best knowledge and belief.

Witness my hand and notarial seal.

[SEAL.] ELISHA BASSETT,
Notary Public.

Stipulation to the action.

On said 26th day of July, A. D. 1871, before this court personally appeared William S. Hilles, of Wilmington, in the district of Delaware, claimant of said schooner, and produced for sureties, John C. Alden, of Bridgewater, and George T. Clark, of Lynn. And the said Hilles, Alden, and Clark, submitting themselves to the jurisdiction of this court, bound themselves, their heirs, executors and administrators, jointly and severally, in the sum of seven thousand five hundred dollars unto the said libellants, that the said Hilles, the claimant, should abide by all orders and decrees interlocutory or final of the court, and should pay the amount of the final decree of the court, and all sums of money that he should be ordered to pay by the final decree of the court, whether it be in this or any appellate court.

Warrants to deliver.

Thereupon, on said 26th day of July, A. D. 1871, by order of the judge, a warrant issued directing the marshal to cause said schooner and appurtenances to be delivered to the claimant aforesaid, he having duly stipulated therefor.

7 On which the marshal made the following return, viz:

UNITED STATES OF AMERICA,
Massachusetts District, ss:

BOSTON, *July* 26, 1871.

Pursuant to the within precept, I have caused the within schooner, S. B. Wheeler, to be delivered to the claimant within named, and have taken his receipt for the same as under.

ROLAND G. USHER,
Marshal.

July 26, 1871. Received from R. G. Usher, marshal in and for the district of Massachusetts, the within-named schooner, in the same state as when seized and detained by him.

W'M S. HILLES.

Answer.

DISTRICT OF MASSACHUSETTS,
United States District Court, ss:

In admiralty.

On the 4th day of August, A. D. 1871, the following answer was filed in court, viz:

To the honorable John Lowell, judge of the district court of the United States for the district of Massachusetts.

Now come Jacob S. Welden, H. W. Bartram, William S. Hilles, John A. Harris, all of Wilmington, George W. Churchman, of New Castle County, all in the State of Delaware, Peter N. Gamble, of Delaware County, State of Pennsylvania, Edwin F. Miller and Nathaniel Horner, both of Roadstown, in the State of New Jersey, by Frederick W. Corson, their authorized agent, intervening for their interest in the schooner S. B. Wheeler, and appear before this honorable court, and for answer to the libel and complaint of Henry C. Rogers and others, against said schooner, allege and articulately propound as follows:

8 First. That the respondents are the true and lawful owners of said schooner S. B. Wheeler, and that no other person or persons are owners thereof.

Second. As to the matters alleged in the first article of said libel, the respondents admit that between twelve and one o'clock on the morning of the day alleged, a collision occurred between the said schooner S. B. Wheeler and the schooner Charles F. Beebe, and that the said last-named schooner sunk; but as to the other matters therein alleged, these respondents have no knowledge, and so will neither admit nor deny, but will require the libellants to prove the same if material.

Third. And in reply to the second article of said libel, the respondents admit that the place of the said collision, and the direction of the wind, were substantially as therein alleged, and aver that the wind blew about a five-knot breeze, and they also admit that the night was clear and that the schooner Charles F. Beebe was sailing on the wind on her starboard tack; but whether said schooner had the lights required by law, set as required by law, and whether an experienced and careful seaman was on the lookout, and another at the wheel on said schooner, the respondents are ignorant, and so will neither admit nor deny, but will require the libellants to prove the same.

Fourth. And as to the other matters and things set forth in said article, and also as to those set forth in the third and fourth articles of

said libel, the respondents say that the same are therein, in great part, falsely alleged, and that the truth is as hereinafter particularly alleged, that is to say:

Fifth. That at the time and place alleged, said schooner S. B. Wheeler, of two hundred and sixty-four tons, new measurement, being on a voyage from the port of Philadelphia to the port of Boston, with a cargo of coal, under the command of Frederick W. Corson, a competent and experienced master, and fully manned and equipped, was sailing with the wind free; that said master was on deck at the time in charge of his vessel, with a competent and able seaman at the wheel, and a competent and able seaman on the lookout, with the lights required by law, set as required by law; that the red light of a vessel about a mile distant was seen over the port bow by said man on the lookout, and at once reported to said master; that said master stepped foward, saw said red light, and ordered the man at the wheel to keep the vessel off a little, which said order was instantly
9 obeyed, and said schooner S. B. Wheeler fell off, until said red light bore about two points over the port bow of said schooner, and said master then ordered the man at the wheel to keep her steady; that afterwards, and when said light was about sixty or seventy yards distant from said schooner, the vessel bearing said light, which afterwards proved to have been the schooner Charles F. Beebe, and which, up to that time, had appeared to be sailing on the wind, nearly in opposite direction to that which the S. B. Wheeler was pursuing, suddenly altered her course, and fell away from the wind in the direction of the S. B. Wheeler; that the said master of the S. B. Wheeler immediately ordered the helm of the S. B. Wheeler to be put hard-a-port, and said order was at once obeyed, and the said S. B. Wheeler began to fall off, but the said Beebe continued to turn to port, coming right down across the bows of the Wheeler and rendering collision unavoidable; and the jib-boom of said S. B. Wheeler striking about the foremost rigging of said Charles F. Beebe, the Wheeler's bow next struck the Beebe about amidships.

Sixth. That if the Charles F. Beebe had kept on her course the collision would not have occurred; and after said schooner altered her course as aforesaid, everything was done on board the S. B. Wheeler to avoid the collision that was possible, and that said collision was caused wholly and entirely by the negligence, carelessness, mistake or mismanagement of those in charge of the schooner Charles F. Beebe.

Seventh. That as to the matters alleged in the fifth article of said libel, the respondents have no knowledge, and so will neither admit nor deny, but will leave the libellants to prove the same.

Eighth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this honorable court; in verification whereof, the respondents crave leave to refer to the depositions and other proofs to be by them exhibited in this cause.

Wherefore these respondents pray, that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellants in costs and otherwise right and justice to administer in the premises.

FREDERICK W. CORSON.

G. A. SOMERBY,
L. S. DABNEY,
Proctors for respondents.

10 SUFFOLK, *ss*:

BOSTON, *July 27th*, 1871.

Then personally appeared before me Frederick W. Corson, who signed the foregoing answer, and made oath that he has read the same, and knows the contents thereof, and that the statements therein contained are true.

Before me,

[SEAL.] JOHN W. HUDSON,
Notary Public.

TESTIMONY FOR THE LIBELLANTS.

Deposition of George H. Scotts, taken before John W. Hudson, notary public, at Boston, Mass., September 14th, 1871.

Direct-examination by Mr. Dodge for the libellants:

Int. 1. State your name, age, residence and occupation; and if you say you are a mariner, state how long you have been, and in what capacity you have been to sea?

Ans. George H. Scott', aged twenty-two years. I belong in New London, Conn., and am a boat-header now—that means third mate; I have been second mate. I have been a mariner eight years; I have been a man aboard of square-rigged vessels for three years.

Int. 2. Were you on board the schooner Charles F. Beebe when she was in collision with the S. B. Wheeler on the 18th of July last; if you were, what were you on board her?

Ans. I was boat-header. I was steering her at the time.

Int. 3. On what voyage was the Charles F. Beebe at the time, and what cargo had she on board?

Ans. On a fishing voyage from Seal Island, bound for New York. She had on board a cargo of fish—halibut.

Int. 4. At what time of day or night did it happen; what was the weather at the time, and which way, and how strong, was the wind?

Ans. It happened at one o'clock Tuesday morning; it was clear weather; the wind was northwest, varying, a good breeze.

11 Int. 5 How much did it vary?

Ans. From half to three-quarters of a point.

Int. 6. How strong was it? About how many knots an hour was your vessel going?

Ans. Six knots and a half. It was a good strong breeze.

Int. 7. What lights, if any, were set on the Charles F. Beebe?

Ans. A green and a red light—green on the starboard and red on the port.

Int. 8. How long had you been at the wheel before the collision?

Ans. One hour.

Int. 9. Which way was your vessel heading, and how was she lying on the wind?

Ans. Heading west by south, half south. She had a good full; she was close-hauled on the wind.

Int. 10. What was the first you knew of the S. B. Wheeler; how did you first learn she was near you?

Ans. I heard the lookout sing out that there was a vessel on the weather bow. I looked and see there was a vessel a point and a half on the starboard bow.

Int. 11. How far off do you think she was then?

Ans. Three-quarters of a mile.

Int. 12. What did you do next?

Ans. Kept on our course.

Int. 13. State now what you saw and did, till the collision.

Ans. Didn't do nothing till the S. B. Wheeler got four points on our starboard bow—three or four points. Then the S. B. Wheeler came right down for us. The officer of the deck told me to put the wheel hard up. Then the S. B. Wheleer struck us.

Int. 14. What did you do when you got the order, "hard up?"

Ans. I put the wheel hard up.

Int. 15. Had you any help in putting it hard up?

Ans. Yes, sir. The captain came up when I had the wheel about half up, and helped me put it up.

Int. 16. How far off was the S. B. Wheeler when you saw she was coming down on you, and when you got the order "hard up," as nearly as you can judge?

Ans. Fifty yards, as near as I can judge.

Int. 17. Did the Charles F. Beebe change her course before the collision; and, if so, how much?

Ans. Yes, sir; she changed it, a point and a half—she might two points—no more than two points.

12 Int. 18. How long had she been close-hauled on the wind before the wheel was put up, as you have stated?

Ans. She had been beating up all night. She had been on that tack about half an hour or an hour.

Int. 19. Had she at any time changed her course during the time she was on that tack, before you put the wheel up, as you have stated?

Ans. No, sir; she hadn't changed her course no more than what the wind varied.

Int. 20. Where did the S. B. Wheeler strike the Charles F. Beebe, and what was the effect of the blow?

Ans. Struck her amidships. It cut her right in two—went half way through her deck.

Int. 21. What became of the crew of the Charles F. Beebe?

Ans. They got on board the S. B. Wheeler.

Int. 22. Where did they get on board of her—on what part of her, I mean?

Ans. Over her bow.

Int. 23. Who, if anybody, did you see when you first got on board the S. B. Wheeler?

Ans. I didn't see nobody when I first got on board. I went on the quarter-deck and asked if there was anybody on board the vessel. I saw a man, and asked him if he knew what he had done. He said yes; it couldn't be helped; he had nothing to do with it. He was one of the seamen.

(The conversation objected to as immaterial, incompetent, and not responsive.)

Int. 24. Did you at any time hear the captain of the S. B. Wheeler say anything about the collision; if so, what was it?

(Objected to.)

Ans. I heard him say he was afraid to keep off any more—afraid he would jibe his main boom and break it.

Int. 25. Were there other vessels near you at the time of this collision; if yes, many or few?

Ans. Yes, sir; there was one to windward of us, and a good many all around.

Int. 26. Does a vessel close-hauled on the wind go off to leeward when the wheel is put up, more or less quickly than a vessel sailing with a wind behind the beam?

Ans. A vessel on the wind doesn't keep off so quickly. The one that's got the free wind keeps off the quickest.

Int. 27. Did the vessels remain together any time after the collision; if, so, what kept them so?

Ans. Yes, they remained till the Charles F. Beebe went down. The S. B. Wheeler was wedged into her.

13 Int. 28. If the S. B. Wheeler had kept the course she was on before she came down on you, as you have said, would she have hit you or passed you?

(Objected to as incompetent.)

Ans. She would have passed us.

Cross-examination by Messrs. Somerby and Dabney, for claimants:

Cross-int. 1. What is the name of the master of the Beebe?

Ans. Capt. Charles Maynard.

Cross-int. 2. Where is he now?

Ans. Here he is.

Cross-int. 3. Who are the other gentlemen present here?

Ans. Mr. Rogers and Mr. Gardner.

Cross-int. 4. Do you know where they live?

Ans. Yes, sir; Mr. Rogers lives in New York. Mr. Gardner lives in New London.

Cross-int. 5. Do you understand that they own the Charles F. Beebe?

Ans. I do, sir.

Cross-int. 6. What have you been doing since the collision you have been describing?

Ans. I have been fishing one trip, and been working ashore two weeks.

Cross-int. 7. In what vessel did you go fishing? Who was master of her, and where did you go?

Ans. The schooner Geo. S. Lampear, Capt. Williams. I went to Seal Island after halibut.

Cross-int. 8. Where have you been at work on shore?

Ans. At home, in New London, in my father-in-law's lot.

Cross-int. 9. How many voyages had you been in the Beebe before the collision?

Ans. Two.

Cross-int. 10. Do you mean two besides the voyage on which she was lost?

Ans. That voyage was the second.

Cross-int. 11. Are you related to or in any way connected with any of the owners of the Beebe?

Ans. I think not. I know I a'n't.

Cross-int. 12. Do you know what Captain Maynard has been doing since the loss of the Beebe?

Ans. Fishing.

Cross-int. 13. In what vessel?

Ans. The schooner Carlos Barry.

Cross int. 14. When you say you are a boat-header now, you don't mean you are actually employed now as a boat-header on any vessel, do you?

Ans. I am; employed in the George Temple.

14 Cross-int. 15. Since when? And who commands her?

Ans. Since yesterday; Captain Beckwith commands her.

Cross-int. 16. How large a portion of the eight years that you say you have been a mariner have you passed on shore?

Ans. Well, about seventeen months.

Cross-int. 17. What is the name of the man who was officer of the deck, when you first saw the Wheeler, on the night you have been speaking of?

Ans. Of what deck—the Beebe's deck? James McLaughlin.

Cross-int. 18. How many officers and crew did the Beebe carry?

Ans. A captain and two officers, and five besides, four men and a steward.

Cross-int. 19. Who were the officers?

Ans. Erastus Strickland, chief officer; and James McLaughlin, second officer.

Cross-int. 20. When and where did you last see Mr. McLaughlin?

Ans. In New London, yesterday.

Cross-int. 21. How many persons were above the Beebe's deck, when you first saw the Wheeler? And what are their names?

Ans. Three. Their names are James McLaughlin, David Murray, and me.

Cross-int. 22. When did you first take the wheel that night?

Ans. Twelve o'clock.

Cross-int. 23. Before that, where had you been, and how long?

Ans. I had been in bed four hours. I came on deck at twelve o'clock.

Cross-int. 24. Did the Beebe tack after you came on deck, before the collision?

Ans. She did not.

Cross-int. 25. How many bells had you struck before the collision?

Ans. Hadn't struck any bell.

Cross-int. 26. Who was the man you relieved at the wheel?

Ans. Mr. Strickland.

Cross-int. 27. What course did he give you?

Ans. "On the wind."

Cross-int. 28. A good full?

Ans. He didn't tell me. I ought to know how to do that, ought to know about it.

Cross-int. 29. Did you find her a good full?

Ans. Yes.

Cross-int. 30. Did you keep a good full?

Ans. I did.

Cross-int. 31. Was it part of your business at the wheel to strike the bells?

Ans. We didn't carry any bell aboard the vessel to strike four bells and two bells.

Cross-int. 32. What did you do to mark the time?

Ans. Look at the clock.

Cross-int. 33. Did you look at the clock that night before the collision?

Ans. I did not.

Cross-int. 34. How did you know, if no bells were struck, when to change the watch, and the man at the wheel?

Ans. The officers of the deck looked out for that.

Cross-int. 35. How long a time passed after you first saw the S. B. Wheeler before the collision?

Ans. Eight or nine minutes.

Cross-int. 36. Are you sure it was so long as that?

Ans. I should judge so. I didn't have the clock in my hand all the while, you know; hadn't seen it since twelve o'clock.

Cross-int. 37. And you were sailing, you say, about six and a half knots an hour, were you not?

Ans. Yes, sir.

Cross-int. 38. How fast did the Wheeler appear to be going? About the same as you?

Ans. Yes, about seven or eight miles. She had the wind to the quarter and we had it ahead—on the bow rather.

Cross-int. 39. Then she must have been about two miles away from you when you first saw her, must she not?

Ans. No. sir.

Cross-int. 50. Why not? Was she not sailing in about the opposite direction to what you were?

Ans. Not exactly. We could see her green light on our weather bow.

Cross-int. 41. How much did the direction she was sailing in differ from the opposite direction to your course?

Ans. I couldn't say, I didn't know how her stern was.

Cross-int. 42. Didn't she and the Beebe approach each other after you first saw her?

Ans. They did.

Cross-int. 43. From all you could see and know, were they not sailing in nearly opposite directions?

Ans. From all I could see, they was.

Cross-int. 44. Then, if you were sailing six and a half knots an hour and the Wheeler was sailing seven or eight, and you saw the Wheeler eight or nine minutes before the collision, must you not have seen her about two miles off?

Ans. I think not. I know not. Three-quarters of a mile is all I see her off.

Cross-int. 45. How do you fix it at three-quarters of a mile?

Ans. That's as near as I can judge.

16 Cross-int. 46. What do you judge by?

Ans. My eyesight.

Cross-int. 47. Did you see any other vessel to leeward of the Wheeler, either before or after the collision?

Ans. I didn't see any; not as I remember.

Cross-int. 48. Were you on deck all the time until you got on to the Wheeler?

Ans. I was.

Cross-int. 49. Did you see no other vessel close to the Wheeler?

Ans. I see another one to windward of her—to windward of us.

Cross-int. 50. How far off from the Wheeler and when? That is, did you see the other vessel before or after the collision?

Ans. I didn't take notice.

Cross-int. 51. How far off was this other vessel from the Wheeler?

Ans. I couldn't tell.

Cross-int. 52. Tell as nearly as you can about how far she was.

Ans. As near as I can judge, about a hundred yards.

Cross-int. 53. In front or behind or alongside of the Wheeler?

Ans. To the windward of her, I should judge.

Cross-int. 54. How long before the collision did you see this other vessel?

Ans. I couldn't say.

Cross-int. 55. Why can't you say?

Ans. I didn't notice that vessel very much in particular any way.

Cross-int. 56. Did you see her before you saw the Wheeler or afterwards?

Ans. I don't remember.

Cross-int. 57. After you first saw her did she keep in sight up to the time of the collision?

Ans. I don't know. I didn't look for her.

Cross-int. 58. How did this other vessel bear from you when you first saw her?

Ans. I couldn't say; on the starboard beam, I should think.

Cross-int. 59. Did she bear from you in about the same direction as the Wheeler, when you first noticed her?

Ans. No, I think more to the eastward.

Cross-int. 60. Do you mean astern of the Wheeler?

Ans. No, ahead of the Wheeler.

Cross-int. 61. Had she passed you before the collision?

Ans. I should think so.

Cross-int. 62. Do you know?

Ans. I couldn't swear to it.

17 Cross-int. 63. What makes you think she had passed?

Ans. I didn't see her after the Wheeler had struck us.

Cross-int. 64. You wouldn't have seen her after that, would you, wherever she was?

Ans. Well, I don't know; I might if I had looked for her very hard.

Cross-int. 65. You didn't look for anything, did you, except to get on to the Wheeler?

Ans. Yes, sir; I went aboard the Wheeler, and looked for men and could not find any—not till I got aft.

Cross-int. 66. Where did the captain come from, when he came to your assistance at the wheel?

Ans. He came out of the companion-way—out of the cabin.

Cross-int. 67. Did any one call him?

Ans. No, sir, I think not.

Cross-int. 68. What were you doing with the wheel?

Ans. I was putting it up when he came on deck.

Cross-int. 69. How long had you been putting it up?

Ans. Well, about four seconds—yes, four seconds.

Cross-int. 70. How long did it take you and him to put it as far as it would go?

Ans. Six seconds, altogether.

Cross-int. 71. Weren't you able to do it alone?

Ans. I was, sir.

Cross-int. 72. How far from you was the companion-way where the captain came on deck?

Ans. Three feet.

Cross-int. 73. Was he dressed?

Ans. He was not, sir; he had his shirt and pants on.

Cross-int. 74. Where was McLaughlin standing when the captain came on deck?

Ans. He was forward, sir.

Cross-int. 75. How far off was the Wheeler when the captain came on deck?

Ans. Fifteen yards.

Cross-int. 76. Did the captain say anything when he first came on deck?

Ans. He did not, sir; not to my recollection.

Cross-int. 77. Was he perfectly silent?

Ans. He was, I think.

Cross-int. 78. Did McLaughlin give any orders before he told you to put the wheel up?

Ans. He did not; not before he told me to put the wheel up.

Cross-int. 79. Did the other vessel, that you have said you saw about a hundred yards from the Wheeler, keep about the same distance from the Wheeler, from the time you first noticed her as long as you
18 remember seeing her, to the best of your recollections?

Ans. To the best of my recollection, she did.

Cross-int. 80. Do you say that the Wheeler, when you first her, was about a point and a half over your starboard bow, and from there worked along till she bore three or four points over your starboard bow, and then suddenly altered her course and bore down on you?

Ans. She did, sir.

Cross-int. 81. Do you know how the captain happened to come on deck just when he did?

Ans. He heard McLaughlin give the word, "keep off."

Cross int. 82. I suppose you have talked over your testimony before giving your deposition, have you not?

Ans. I have not, sir.

Cross-int. 83. Have you not talked over your testimony at all?

Ans. I might have told how it happened. If anybody asked me how it happened I very likely told them.

Cross-int. 84. Haven't you talked over your testimony several times before giving your deposition?

Ans. I never stopped to count them.

(To question repeated.) I don't know how many times I have talked it over.

Cross-int. 85. About how many times do you think you have?

Ans. I never stopped to count them.

Cross-int. 86. Will you state, as nearly as you can, how many times you have talked over your testimony before giving your deposition?

Ans. As nearly as I can? Well, about twenty times, as nearly as I can.

Cross-int. 87. When was the first time?

Ans. When I got home.

Cross-int. 88. When was the last time?

Ans. I couldn't say.

Cross-int. 89. Why not?

Ans. I never stopped to think. The time has so long gone by, I couldn't think.

Cross-int. 90. When is the last time you remember talking over your testimony?

Ans. I don't remember when it was.

Cross-int. 91. Didn't you talk over your testimony to-day, in this very office, before giving your deposition?

Ans. To-day? No, sir.

Cross-int. 92. You saw the counsel who first asked you questions to-day, in this office, before you gave your deposition, did you not?

Ans. I saw him in his office—yes, sir.

Cross-int. 93. How long did you see the said counsel to-day in
19 his office, before you gave your deposition?

Ans. Twenty minutes, I should think.

Cross-int. 94. Will you swear it was not as much as an hour?

Ans, I couldn't say. I didn't notice the time.

Cross-int. 95. Who was present?

Ans. Mr. Rogers, Mr. Gardner, Capt. Maynard, and me.

Cross-int. 96. Didn't the counsel ask you at all this morning, in his

office, before you gave your deposition, as to the testimony you was about to give?

Ans. He asked me a few questions; he didn't ask me the whole of my statement.

Cross-int. 97. You answered the counsel, I suppose, did you not, when he asked you the questions?

Ans. I did, sir.

Cross-int. 98. And you did talk with the counsel as to your testimony you was about to give, did you not?

Ans. A few questions.

Cross-int. 99. Is your memory as good as persons in general, do you think?

Ans. I think so.

Cross-int. 100. And when I first asked you if you had not talked with the counsel this morning on the subject of your testimony, before giving your deposition, you had forgotten that you had talked with the counsel, had you not?

Ans. Had forgotten? I say no, I hadn't.

Cross-int. 101. If you had not forgotten that you talked with the counsel this morning, before giving your deposition, what did you mean by saying, in substance, that you had not talked with the counsel on the subject of your testimony, this morning, before giving your deposition? (Objected to.)

Ans. I say I did not tell him the whole of my testimony.

GEORGE H. SCOTT.

Deposition of Charles A. Maynard, taken before John W. Hudson, notary public, Boston, Mass., September 14th, 1871.

Direct examination by Mr. Dodge, counsel for the libellants:

Int. 1. State your name, age, residence and business; and if you say you are a mariner, state how long you have been, and in what capacity you have been to sea.

Ans. Charles A. Maynard, of New London, Conn. I am twenty-eight years old, and have been a mariner fourteen years. I am going to sea in a day or two as mate. I have been master.

Int. 2. Were you on board the schooner Charles F. Beebe when she was in collision with the S. B. Wheeler, on the 18th of July last; if you were, what were you on board her?

Ans. I was master of her.

Int. 3. On what voyage was the Charles F. Beebe at the time; and what cargo had she on board?

Ans. On a fishing voyage from Seal Island, Nova Scotia, bound to New York, with halibut.

Int. 4. At what time of day or night did it happen?

Ans. At one o'clock on the morning of the 18th.

Int. 5. Whose watch on deck was it?

Ans. It was Mr. McLaughlin's watch on deck. He was the second mate.

Int. 6. State where you had been just before the collision, and where you were at the time of the collision.

Ans. I was in the cabin at the time of the collision. I had been on deck all the fore part of the night. At the time when she struck us I was on deck.

Int. 7. At what time did you go below, and what called you on deck just before the collision?

Ans. I went below at half past twelve. I heard the man at the wheel, or the man forward, give the order to keep off. I came on deck.

Int. 8. What was the order exactly that you heard?

Ans. "Hard up."

Int. 9. Where were you, and what doing, when you heard that order?

Ans. I was in the cabin, in my berth. I had turned into my berth.

Int. 10. Were you asleep or awake?

Ans. I was awake.

Int. 11. What had you on at the time?

Ans. My shirt and pants and stockings.

Int. 12. What did you do when you heard the order "hard up?"

Ans. I came on deck.

Int. 13. How many steps up did you have to go, and where did you come out on deck?

Ans. Three steps up, to the front of the wheel.

Int. 14. How long do you think it was from the time you heard the order "hard up," before you were on deck?

Ans. Four or five seconds.

Int. 15. State whether or not you stopped to put anything on?

Ans. I did not.

21 Int. 16. What did you do when you got on deck first?

Ans. Helped the man at the wheel get the wheel hard up.

Int. 17. State whether you saw the vessel that ran into you when you first got on deck?

Ans. I did, while I was helping put the wheel up.

Int. 18. How far from you was she, as nearly as you can judge, when you first saw her?

Ans. I should think not over fifty or sixty feet.

Int. 19. How did she strike the Charles F. Beebe?

Ans. Took her nearly amidships.

Int. 20. Was she coming straight for you or was she swinging when you first saw her?

Ans. Nearly straight. She might have been swinging a very little.

Int. 21. Was the blow she gave you square on, or glancing, and if glancing, which way was it glancing?

Ans. Glancing a very little aft.

Int. 22. How much from a right angle was it, as nearly as you can judge?

Ans. About one point.

Int. 23. What was the effect of the blow on your vessel?

Ans. Cutting her half way in two, or more.

Int. 24. After you got the wheel hard up, what did you do next; which way did you go? I mean before the collision.

Ans. I started forward.

Int. 25. How far did you get before the collision took place?

Ans. About half way to the main rigging.

Int. 26. How far from the wheel was that?

Ans. I should think it might be seven or eight feet.

Int. 27. State what delay, if any, you made at the wheel after getting it hard up before you started forward, as you have said?

Ans. I made none to speak of.

Int. 28. What do you mean by "to speak of?"

Ans. Nothing more than to turn round and go forward.

Int. 29. What did you do after the collision?

Ans. Looked to see how bad she was cut, and then got on board the S. B. Wheeler.

Int. 30. When you went below last before the collision, how was your vessel lying as to the wind?

Ans. Lying full and by, close-hauled.

Int. 31. Who, if any body, did you see, when you first got on board
22 the S. B. Wheeler?

Ans. I saw nobody forward, till I got aft. I saw two men.

Int. 32. Did you at any time hear the captain of the S. B. Wheeler say anything about the collision; if so, what was it?

(Objected to.)

Ans. I heard him say "he was sorry for it; he couldn't help it then."

Int. 33. Did he, or not, make any suggestion that your vessel was in fault?

(Objected to, as incompetent and leading.)

Ans. Not to me.

Int. 34. Does a vessel close-hauled on the wind go off to leeward when the wheel is put up, more or less quickly than a vessel sailing with a wind behind the beam?

Ans. Less quickly.

Int. 35. How much difference would there be?

Ans. About a half.

Int. 36. Did you hear the captain of the S. B. Wheeler say anything about how he managed his vessel before the collision?

(Objected to, as incompetent, irrelevant, and leading.)

Ans. He said nothing to me.

Int. 37. How large was the Charles F. Beebe, and what cargo had she on board?

Ans. Forty-one tons. Her cargo was in the neighborhood of fifteen thousand pounds.

Int. 38. What had you on board this vessel; what interest, if any, had you in her?

Ans. My charts, quadrants, other nautical instruments, and clothes. I had no interest in the vessel.

Int. 39. What was the fair market-value of the property you had on board her, without reference to the cargo, as nearly as you can judge?

Ans. I should judge it was worth one hundred and seventy-five dollars.

Int. 40. How far, if at all, were you interested in the cargo?

Ans. The mate and me was interested in three-fifths.

Int. 41. Where did this cargo come from, and how was it obtained?

Ans. Seal Island, Nova Scotia. I caught it there.

Cross-examination by Messrs. Somerby and Dabney, counsel for claimants:

Cross-int. 1. How do you know how much halibut you had on board?

Ans. I don't know; I judge.

Cross-int. 2. Did you hear George H. Scott testify to-day about this matter?

Ans. I did, sir.

23 Cross-int. 3. Did you hear all his testimony?

Ans. I think I did.

Cross-int. 4. Have the owners of the Charles F. Beebe been present while you have been testifying?

Ans. A part of them have.

Cross-int. 5. Was the wind when you went below, as you say, about half an hour before the collision, in such a direction that your vessel could fetch through Vineyard Sound?

Ans. Yes, sir.

Cross-int. 6. How far were you from Tarpaulin Cove?

Ans. I should think we was five miles.

Cross-int. 7. You were pretty well up to windward then, were you not?

Ans. About the middle of the sound.

Cross-int. 8. How long had you been on the same tack when you went below?

Ans. About twenty-five minutes, I should judge.

Cross-int. 9. How long were you on the port-tack before that?

Ans. Half an hour.

Cross-int. 10. Did you have any conversation with the captain of the Wheeler after you got aboard of her, about how the accident happened?

Ans. I did not.

Cross-int. 11. Did you say anything on the subject to him, or he to you?

Ans. Nothing more than to ask him if he see what he had done.

Cross-int. 12. How long did you remain on his vessel?

Ans. About three hours.

Cross-int. 13. And was nothing more than you have stated, said by either of you to the other about the accident during that time?

Ans. No, sir; nothing that I think of.

Cross-int. 14. Didn't you tell him it was his fault?

Ans. I did not.

Cross-int. 15. Didn't the master of the Wheeler ask you, when you boarded his vessel, how the accident happened, or something of that kind?

Ans. He asked me if I saw him. That's all he asked me about it.

Cross-int. 16. And did you not then and there say to the captain of the Wheeler, that the man at the wheel of your vessel made a mistake, put his wheel the wrong way, or something to that effect?

Ans. No, sir; I did not.

Cross-int. 17. Didn't you say something of that kind to him, in substance, at some time while you were on board his vessel?

Ans. No, sir; I don't think I did.

24 Cross-int. 18. Did the Beebe steer hard or easy in such weather as it was the night of the accident?

Ans. She steered middling easy.

Cross-int. 19. She was a small vessel, was she not?

Ans. She wasn't very large.

Cross-int. 20. Did she mind her helm quickly?

Ans. Yes, sir.

Cross-int. 21. Did she steer with a wheel or tiller?

Ans. With a wheel.

Cross-int. 22. Would one man alone, in such weather as you had that night, have any difficulty in putting the Beebe's wheel up or down?

Ans. No, sir.

Cross-int. 23. Did you see any other vessel near, besides the Wheeler, when you came on deck?

Ans. I saw one vessel.

Cross-int. 24. How near to the Wheeler?

Ans. I didn't pay much attention; I should think quarter of a mile.

Cross-int. 25. To windward or to seaward of the Wheeler?

Ans. To windward of her, on the weather bow.

Cross-int. 26. Then she passed you before the Wheeler struck?

Ans. Yes, sir.

Cross-int. 27. Did you see any other vessel go close by to leeward of you after the collision?

Ans. I didn't notice any.

Cross-int. 28. Might there have been one that did so, without your noticing her?

Ans. Yes, sir; if she wasn't too close.

Cross-int. 29. How close do you think one might have passed without attracting your notice?

Ans. Quarter of a mile.

Cross-int. 30. Could there have been another vessel close behind the Wheeler when you came on deck without your seeing her?

Ans. I don't think there could.

Cross-int. 31. Will you say there was not another vessel within a hundred yards of the Wheeler and behind her?

Ans. I will not; because I don't know.

Cross-int. 32. Did you see any other vessel within a hundred yards of the Wheeler?

Ans. I don't think I did.

Cross-int. 33. Neither before nor after the collision?

Ans. There was, afterwards.

Cross-int. 34. Where, and how long afterwards?

Ans. Anywhere from fifteen minutes till morning, on both sides of her.

25 Cross-int. 35. Did you see two lights on the Wheeler's bow after you came on deck at any time?

Ans. I only saw one.

Cross-int. 36. Did she only have one light set?

Ans. I only saw one.

Cross-int. 37. Which one did you see?

Ans. I didn't pay any attention which it was. I didn't have time to do it.

Cross-int. 38. How do you know then you saw but one?

Ans. That was all I noticed.

Cross-int. 39. Do you mean to say you noticed a light, and can't tell what color it was?

Ans. Yes, sir.

Cross-int. 40. If the Wheeler came down on you as you say, and struck you at an angle, which didn't vary more than a point from a right angle, wouldn't you have seen both her lights if they were set in their proper places?

Ans. I might, if they hadn't been shaded.

Cross-int. 41. Shaded by what?

Ans. Sails.

Cross-int. 42. Then you don't mean to be understood as saying that the Wheeler didn't have all the lights she ought to, when the collision occurred?

Ans. No, sir; I don't mean any such thing.

Further direct interrogatories by Mr. Dodge, counsel for libellants:

Int. 42. Which could put the wheel of the Charles F. Beebe hard up in the shorter time, one man or two?

Ans. Two.

Int. 13. How many tacks had your vessel made while you were on deck that night before you went below, if you remember?

Ans. She might have made a hundred, more or less.

Int. 44. How long had she been beating, before you went below?

Ans. All the fore part of the night—six hours.

CHARLES A. MAYNARD.

Deposition of David Murray, taken under commission before Abiel Converse, esq., commissioner, on the second day of November, A. D. 1871.

Int. 1. State your residence and business; and if you say you are a seaman, state how many years you have been to sea.

26 Ans. David Murray; aged thirty years; residence at New London, and a mariner by profession. Have been to sea seventeen or eighteen years.

Int. 2. Were you on board the Charles F. Beebe when she was in collision with the schooner S. B. Wheeler, in July last? If you were, what were you on board her?

Ans. I was on board the schooner-smack Charles F. Beebe of New London, when she was in collision with the schooner S. B. Wheeeler, in July last, between Old Town and Tarpaulin Cove, and was a foremast hand in the Charles F. Beebe.

Int. 3. Did you or not hear the officer of the deck, Mr. McLaughlin, report the light of the S. B. Wheeler; if you did, where were you at the time?

Ans. I did hear Mr. McLaughlin, who was officer of the deck at that time, report the light of the S. B. Wheeler; I was standing by the side of Mr. McLaughlin forward, on the lookout, when he gave the order to the man at the wheel, "hard up." When this order was given, it was about one o'clock in the morning.

Int. 4. Did you or not then see her light; and if you did, which light did you see?

Ans. At the time Mr. McLaughlin reported the light, I saw the starboard light of the S. B. Wheeler.

Int. 5. Over which bow of the Charles F. Beebe did it bear, and how much; how many points?

Ans. Saw the light of the S. B. Wheeler over the starboard bow of the Charles F. Beebe; it bore about a point, that is, the starboard light of the S. B. Wheeler bore about a point over the starboard bow of the Charles F. Beebe.

Int. 6. Did you hear Mr. McLaughlin, the officer of the deck, give any order about the wheels; if you did, what order did he give?

Ans. I did hear Mr. McLaughlin give the order to the man at the wheel, "hard up."

Int. 7. How far off was the S. B. Wheeler when that order was given?

Ans. The S. B. Wheeler was three rods off of us when the order was given.

Int. 8. Was there or not any change in the course of the Charles F. Beebe, from the time the light of the S. B. Wheeler was seen, until the order to put the wheel "hard up" was given by the officer of the deck, if you have said such order was given?

Ans. There was no change in the course of the Charles F. Beebe after we first saw the light of the S. B. Wheeler, until after the order was given by the officer to "hard up."

27 (The claimants object to all the foregoing interrogatories, after the one numbered 2, as leading and for substance.)

Cross-interrogatories proposed in behalf of the claimants, de bene esse:

Cross-int. 1. When were you last in Boston, Massachusetts?

Ans. Have not been in Boston, Massachusetts, since June, five years ago last June.

Cross-int. 2. How many different times have you been in said Boston since the collision between the Beebe and Wheeler, and when?

Ans. I have not been in Boston at all since said collision.

Cross-int. 3. Did you own any interest in the cargo of the Charles F. Beebe, or in the vessel, directly or indirectly? If yes, when and what?

Ans. I did not own any interest, directly or indirectly, in the Charles F. Beebe or her cargo. I shipped on her by the month; had no other interest in smack or cargo.

Cross-int. 4. Whose watch was it on the Beebe when the collision happened?

Ans. It was the watch of the officer of the deck, Mr. McLaughlin, at the time the collision occurred.

Cross-int. 5. When did you go below and turn in last before the collision?

Ans. I turned in at eight o'clock, and turned out at twelve o'clock; and I was on deck from twelve o'clock until the collision happened, about one.

Cross-int. 6. What time did the collision happen?

Ans. It happened about one o'clock in the morning, as nearly as I can state.

Cross-int. 7. State the time when the collision happened, as nearly as you can.

Ans. It happened about one o'clock in the morning, as nearly as I can state.

Cross-int. 8. State all the names of the officers and crew of the Charles F. Beebe, and on what part of the vessel each one of them was at the time of the collision. State this as nearly and exactly as you can.

Ans. The officers of the Charles F. Beebe were Charles Maynard, captain; Erastus Strickland, first mate; and Mr. McLaughlin was second mate. When the collision happened Captain Maynard was on deck, aft; Mr. Strickland was below since twelve o'clock, when his watch ended, and we come up; and Mr. McLaughlin was standing by me on deck, forward. The crew were George Scott, myself, and
28 two Portuguese men whose names I did not know, and the steward whose name was James Butler. At the time of the collision, Scott was at the wheel; I was on the lookout, forward, with the officer of the deck; the two Portuguese men were in the first officer's watch and were below; and the steward was below.

Cross-int. 9. Who was at the wheel at the time of the collision, and who on the lookout?

Ans. Scott was at the wheel; and I was on the lookout, and so was Mr. McLaughlin, as I have before stated.

Cross-int. 10. Did the Beebe steer hard or easy?

Ans. She steered kind of easy—she steered easy.

Cross-int. 11. How fast was she going at the time of the collision?

Ans. We were going through the water four or five knots before the collision.

Cross-int. 12. How far was the Wheeler from the Beebe when you first came on deck? State as nearly as you can.

Ans. When I first came on deck the Wheeler was not in sight; when I first saw her light she was about three (3) rods from us.

Cross-int. 13. How long was it from the time when you first came on deck till the time of the collision?

Ans. About one hour, as near as I can judge. I came on deck at twelve, and the collision occurred about one.

Cross-int. 14. So far as you know, who on the Charles F. Beebe first saw the S. B. Wheeler?

Ans. I think Mr. McLaughlin saw her first; he first reported her light.

Cross-int. 15. Who was on the lookout on board the Beebe when the Wheeler was first seen?

Ans. Mr. McLaughlin and myself were on deck, forward, on the lookout, when we first saw the S. B. Wheeler.

Cross-int. 16. How far off was the Wheeler when first seen from the Beebe, to the best of your knowledge and judgment?

Ans. The S. B. Wheeler was three rods off from the Beebe when we first saw her, according to my best knowledge and judgment.

Cross-int. 17. How did the Wheeler bear from the Beebe when first seen from her?

Ans. She bore about a point on our starboard bow when first seen by us.

Cross-int. 18. How long before the collision was the Wheeler seen from the Beebe?

Ans. Somewhere about two minutes.

Cross-int. 19. State, to the best of your knowledge and judgment, how long before the collision the Wheeler was seen from the Beebe.

29 Ans. To the best of my knowledge and belief, it was about two minutes from the time the Wheeler was first seen from the Beebe until the collision.

Cross-int. 20. How fast was the Wheeler sailing when first seen from the Beebe; how many knots an hour; and at the rate of how many knots an hour did she sail from the time she was first seen until the collision?

Ans. When I first saw the Wheeler, she was sailing before the wind about eight to ten knots an hour, and continued to sail at that rate until we came together.

Cross-int. 21. Please answer the last question, to the best of your knowledge and judgment.

Ans. I have already answered, to the best of my knowledge and judgment.

Cross-int. 22. Did you see any other vessel near the S. B. Wheeler from the time you first saw the Wheeler until the time of the collision?

Ans. No, sir; no other vessel.

Cross-int. 23. If yes, how near was she to the Wheeler, and which way was she steering?

Ans. Saw no other vessel in sight.

Cross-int. 24. Did you notice any change in the distance between the Wheeler and the other vessel, if you say you saw one, from the time you first saw them until the time of the collision?

Ans. Did not see any.

Cross-int. 25. If yes, describe the course of such other vessel, with reference to that of the Wheeler, to the best of your observation and recollection.

Ans. Did not see any other vessel.

Cross-int. 26. If you saw such other vessel, what became of her after the collision?

Ans. Did not say I saw any other vessel.

Cross-int. 27. If you say she passed you, which way did she go; and did she pass to windward or leeward of you?

Ans. Have said I did not see any other vessel.

Cross-int. 28 Who first talked with you about taking your testimony?

Ans. No person has ever talked to me about it since I came ashore

here at New London, the second day after the collision, say about forty-eight hours. I have been to sea ever since, until the eighteenth of October. Have seen some of the crew and officers since I have been ashore last, but have had no talk with any of them about my testimony; have only just spoken to them, not about this matter. No person has talked to me about my testimony.

30 Cross-int. 29. State whether you have read these questions and cross-questions, or any of them, or any copy of them, or any of them, or had any information from any person, or by any means, as to the nature or substance of them, or any of them, before they were read to you by the magistrate taking your deposition?

Ans. I have never seen or heard any of these questions or cross-questions until read by you to me now, to-day, and only one at a time in their order. I have never been told what they were, or knew anything about them before. This is my first knowledge of them, or any of them.

Deposition of Erastus Strickland, taken under commission before Abiel Converse, esq., commissioner, at New London, Ct., on the 7th of November, A. D. 1871.

Int. 1. State your name, age, residence, and business; and if you say you are a mariner, state how long you have been, and in what capacity you have been to sea.

Ans. Erastus Strickland; aged twenty-nine years; place of residence is New London, and I have been a mariner since I was twelve years old. For the last five years I have been mate, first mate of yacht and fishing vessels.

Int. 2. Were you on board the schooner Charles F. Beebe when she was in collision with the schooner S. B. Wheeler, in July last; if you were, what were you on board her?

Ans. I was on board the schooner Charles F. Beebe when she was in collision with the schooner S. B. Wheeler, in July last, and was first mate.

Int. 3. Where were you when the collision took place? And if you say you were on deck, state how long you had been there, and what brought you there.

Ans. I came on deck just before the collision; heard the man at the wheel sing out, "My God! my God! she is coming into us," or words to that effect, which waked me up, and I rushed on deck; had been on deck but a few seconds when the collision occurred; had just time to run from the companion-way on board the schooner Wheeler.

Int. 4. If you have said you came on deck because you heard
31 any call, exclamation, or order on deck, state whether you were awake when you heard it, or was waked by it from sleep.

Ans. I was waked up by the cry of the man at the wheel, as above stated.

Int. 5. If you were in your berth, what clothing had you on?

Ans. I was in my berth asleep, had on my pants, shirt, stockings, drawers, and undershirt, and that is all; had not time to put on or get anything else.

Int. 6. State what you did.

Ans. I ran upon deck, and then on board the S. B. Wheeler as fast as I could, after I got waked up.

Int. 7. If you say you went on deck, state how quickly you did it.

Ans. Not many seconds getting from my berth on deck; not more

than six or ten seconds. I came right up as quick as I could; never stopped for nothing.

Int. 8. State whether or not you stopped to put on any clothing, and if so, what.

Ans. I never stopped for nothing.

Int. 9. How far off was the S. B. Wheeler when you got on deck, and on which side of the Charles F. Beebe?

Ans. The schooner S. B. Wheeler, when I got on deck, was, I should say, sixteen to eighteen feet off, on the starboard side of the Beebe, nearly amidships, and glancing a little aft.

Int. 10. Where did the S. B. Wheeler strike the Charles F. Beebe; on which side, and where on that side?

Ans. She struck us on our starboard side, just forward of the main rigging.

Int. 11. Did the S. B. Wheeler strike the Charles F. Beebe at right angles or glancing; and, if glancing, which way?

Ans. She struck the Beebe, glancing aft, about one point and a half, I should judge.

Int. 12. What was the effect of the blow upon the Charles F. Beebe; what became of the Charles F. Beebe?

Ans. It sunk in about ten minutes. It cut her more than half way across her.

Int. 13. Where did you go after the collision?

Ans. I went on board the S. B. Wheeler, staid on board until about daylight, and then got aboard schooner Benjamin Strong, (I think that was her name,) and he took us to Newport.

Int. 14. If you say you went on board the S. B. Wheeler, state whether or not you had any conversation with her captain about the collision; if you did, what was it? State all.

Ans. While I was on the S. B. Wheeler I heard the captain of
32 her say that he kept off all he could without jibing his main-boom. He said to me, "This is a bad job." I said, "It is for us, for we have lost everything." This is all I remember hearing him say about the collision.

Int. 15. On what part of the S. B. Wheeler did you get, and which way did you walk, and where did you first see any one of her officers or crew?

Ans. I got on to the Wheeler forward over by her cat-head, and walked aft to the galley, and the first man I saw was the cook, a colored man; he was outside the galley, about midships, walking forward. Saw no others until I got aft on the quarter-deck, when I saw the crew taking in mainsail; the captain was there.

(The claimants objected to all the foregoing interrogatories, after the one numbered 2, as leading and for substance.)

Cross-interrogatories proposed in behalf of the claimants de bene esse:

Cross-int. 1. When were you last in Boston, Massachusetts?

Ans. I never was in Boston, Massachusetts, in my life.

Cross-int. 2. How many different times have you been in said Boston since the collision between the Beebe and Wheeler, and when?

Ans. I have never been there before or since the collision—never in my life.

Cross int. 3. Did you own any interest in the cargo of the Charles F. Beebe, or in the vessel, directly or indirectly; if yes, when and what?

Ans. I owned a part of the fish that were in her. Had no other inter-

est in vessel or cargo, directly or indirectly. I had a hand-share in the fish, nothing else.

Cross-int. 4. Whose watch was it on the Beebe when the collision happened?

Ans. It was the watch of James McLaughlin; it was properly the captain's watch, but McLaughlin stood it—took captain's place. It is called the captain's watch, but he never stands it; that duty belongs to the second officer—McLaughlin was the second officer.

Cross-int. 5. When did you go below and turn in last before the collision?

Ans. I went below at twelve o'clock, when my watch was up, and turned in about half-past twelve, and had just got to sleep (not sound) when I heard the man at the wheel cry out, as stated in my direct examination.

Cross-int. 6. What time did the collision happen?

33 Ans. The collision happened somewhere about one o'clock in the morning, as near as I could judge.

Cross-int. 7. State the time when the collision happened, as nearly as you can.

Ans. I have stated as near as I can that it was about one o'clock. I did not stop to look, and can't tell exactly, but it was about one o'clock.

Cross-int. 8. State all the names of the officers and crew of the Charles F. Beebe, and on what part of the vessel each one of them was at the time of the collision. State this as nearly and exactly as you can.

Ans. The captain's name was Charles Maynard; Erastus Strickland first mate; James McLaughlin second mate; George Scott, boat-header; David Murray, James Butler, cook; two Portuguese men, don't know their names; one we called Bob. The two Portuguese were below asleep—belonged to my watch. Captain was on deck when I got there, and was there at time of collision. McLaughlin was on deck forward; David Murray was on deck forward. Captain Maynard, Scott, and Butler, the cook, were aft at the wheel when I got up.

Cross-int. 9. Who was at the wheel at the time of the collision, and who on the lookout?

Ans. George Scott was at the wheel; it was his voice that waked me up, and when I got on deck the captain and cook were there; McLaughlin and Dave Murray were on the lookout.

Cross-int. 10. Did the Beebe steer hard or easy?

Ans. She steered very easy.

Cross-int. 11. How fast was she going at the time of the collision?

Ans. She was going about seven knots, I should say.

Cross-int. 12. How far was the Wheeler from the Beebe when you first came on deck? State as nearly as you can.

Ans. As near as I can state, it was sixteen or seventeen feet; she was close on top of us when I got on deck.

Cross-int. 13. How long was it from the time when you first came on deck till the time of the collision?

Ans. Not over three or four seconds.

Cross-int. 14. Did you see any other vessel near the S. B. Wheeler before the collision?

Ans. No, sir.

Cross-int. 15. If yes, how near to the Wheeler, which way was she sailing, and how did she bear from the Wheeler, and what became

34 of her after the collision?

Ans. I did not see any other vessel at the time.

Cross-int. 16. If you say she passed you after the collision, which way did she go, and did she pass to windward or to leeward of you?

Ans. I never saw any other vessel until half or three-quarters of an hour after the collision.

Cross-int. 17. Who first talked with you about taking your testimony?

Ans. Tommy Gardner is the only one that ever talked to me about taking my testimony, and he asked me to come here to give it, and that is all he said about it.

Cross-int. 18. State whether you have read these questions and cross-questions, or any of them, or any copy of them, or any of them, or had any information from any person or by any means as to the nature or substance of them, or any of them, before they were read to you by the magistrate taking your deposition.

Ans. I have never seen or heard any of these questions, or any copy of them, and never knew anything about what they were until I have heard them read here to-day, one at a time.

TESTIMONY FOR THE CLAIMANTS.

Deposition of Ziba Taylor, taken before Charles F. Walcott, esq., notary public, Boston, September 13th, 1871.

Int. 1. State your name, age, residence, and occupation; and if you say you go to sea, state how long you have been going to sea, and in what capacity or capacities.

Ans. Ziba Taylor; Cape May, New Jersey; thirty-seven years of age; I go to sea; I have been going to sea for twenty-three years; for the last sixteen years I have been mostly master, a little of the time mate; the other seven years before the mast and cook; started cook and advanced up.

Int. 2. When did you last go mate, and what is your present occupation?

Ans. I was last mate in May last; my present occupation is master.

35 Int. 3. State whether or not, at any time within a few months, you saw a collision between two schooners in Vineyard Sound.

Ans. I did, sir, see a collision off Tarpaulin Cove, at night, on the seventeenth or eighteenth of July, a little after twelve o'clock.

Int. 4. What kind of night was it; that is, was it dark, light, clear, or thick; and what was the direction of the wind?

Ans. It was a very clear, starlight night, wind N. W. to N. W. by N.

Int. 5. How much wind was there, and how did you come to be in Vineyard Sound at the time?

Ans. There was a five to a six-knot breeze; I was bound to Boston, and that is the way that I had to come through the Vineyard; the way that we usually come.

Int. 6. What vessel were you in, and in what capacity?

Ans. In the schooner Hannah P. Hand, as master.

Int. 7. Where were you coming from?

Ans. Philadelphia.

Int. 8. Did you see either of the vessels before the collision; if yes, which one were you nearest to, and how did you bear from her for an half hour before the accident?

Ans. Yes, sir, I saw them both; I was steering after one of them, had her about half a point on my port bow—that was the S. B. Wheeler, I suppose—that's what I heard after I got here; I should suppose I was from half a mile to a mile, nearly a mile, from the furthest vessel—that

is, the vessel bound to the westward; I wasn't more than two hundred yards from the S. B. Wheeler; I had been steering after the S. B. Wheeler from Gay Head, clean in; it might have been two hours, and it might have been half an hour; we were going after her with a nice breeze.

Int. 9. State what you saw of the collision, describing the course taken by the S. B. Wheeler, and what you saw of the other vessel and the course taken by her after you first saw her.

Ans. I saw the vessel bound to the westward, about five minutes before the collision, nearly direct ahead of the Wheeler, so that I saw her port light, red light; in a very short time, one or two minutes, probably, she luffed up to the westward, which shut her light in behind the Wheeler, so that I couldn't see her to the windward of the Wheeler; also hid her sails to the windward—couldn't see them. The next I see was the Wheeler full directly off across my bows. I went and took the wheel of my vessel myself, and kept my vessel off clear of her; next, I saw the green light of the schooner bound to the westward; I saw that,
36 as she was coming out across the Wheeler's bow; I came up round the bows of both vessels, close, and the Wheeler was right between the other vessel's masts.

Int. 10. If the schooner bound to the westward had held her course and the Wheeler had held hers, would they have met, or would they have passed each other; and, if they would have passed, how would they have passed—on which side of each other?

(Objected to as incompetent.)

Ans. If the schooner bound to the westward had held her course, she would have gone to the windward of the Wheeler some distance.

Int. 11. Do you think of anything that could have been done by the Wheeler to avoid the *the* collision which was not done?

(Objected to as incompetent.)

Ans. I don't think there could; I think there was everything done that lay in his power.

Int. 12. Was there anything to prevent the Wheeler from luffing and going to windward of the other schooner?

Ans. Yes, sir; she couldn't have luffed to the windward with safety.

Int. 13. Was there anything that could have been done by the schooner bound to the westward to avoid the collision, which was not done?

(Objected to as incompetent.)

Ans. There was, sir.

Int. 14. What was it?

Ans. She could have held her course.

Int. 15. What, in your opinion, caused the collision; and which vessel, in your judgment, was in fault?

(Objected as undertaking to ask the witness to say what it is the province of the court to decide.)

Ans. In my opinion, the cause of the collision was that the schooner bound to the westward kept hard off across the Wheeler's bow; the vessel bound to the westward was in fault decidedly.

Int. 16. How much have you been to sea during the last sixteen years?

Ans. I have never done anything else—always been to sea.

Int. 17. How much of the time during the last sixteen years have you been as mate?

Ans. Probably three years of time—not over that.

Int. 18. What kind of vessels have you been going master of,
37 and how large ones?

Ans. Always in schooners, from one hundred and fifty up to four hundred tons.

Int. 19. On what voyages?

Ans. Generally coasting.

Int. 20. Where?

Ans. Well, from the Gulf of Mexico to Maine.

Cross-examination by Mr. Dodge, counsel for libellants:

Cross-int. 1. Where does the Hannah G. Hand belong?

Ans. She hails from Camden, N. J.

Cross-int. 2. Who are her owners?

Ans. Well, she is owned by several: H. S. and I. O. Thorps, sail-makers, of New York, are the principal owners—they own one-eighth; Henry P. Simmons, of Passaic, N. J., one-eighth; Capt. Somers Hand, three thirty-second'; he lives in Tuckahoe, N. J.; Captain P. M. Wheaton, of Tuckahoe, one-sixteenth; Shoemaker and Steelman, of Tuckahoe, one-sixteenth; Ward W. Still, of Tuckahoe, three thirty-second'; James Budd, of Tuckahoe, one-sixteenth; Mary A. Rhodes, one thirty-second, I think; Ebenezer Wescott, of Camden, N. J., one thirty-second, I think; I think there is a widow by the name of Whittaker, of Bridg'ton, N. J., owns one thirty-second. That's about all I can think of. Joseph Hand, of Camden, N. J., one-sixteenth; Jonas Steelman, of Tuckahoe, one-sixteenth.

Cross-int. 3. Who asked you to come here to testify?

Ans. Capt. Frederick Corson I think is his name.

Cross-int. 4. Of what vessel is he master?

Ans. The schooner S. B. Wheeler.

Cross-int. 5. Who told you that the vessel you saw was the S. B. Wheeler?

Ans. I was told here, by several captains in Ray & Walter's, after I got here. Captain Louis Smith, for one, and Captain DeMott Shaw.

Cross-int. 6. When did the captain of the S. B. Wheeler first speak to you about it?

Ans. He first spoke to me about it at Ray & Walter's, after I had been introduced to him; I don't remember the day of the month; it was in two or three days after the collision happened; there was a fair wind, and I came right to Boston.

Cross-int. 7. Did the captain of the S. B. Wheeler talk the matter over with you at that or any other time?

Ans. He did, at that time.

Cross-int. 8. Did you, at that time, go with him to see counsel?

Ans. I did not, sir.

38 Cross-int. 9. Did you not come with him to my office?

Ans. No, sir, not with Captain Frederick Corson; I came with his father to this office. (Mr. Somerby's office.)

Question repeated. No, sir, I did not.

Cross-int. 10. How long before the collision did you first see the vessel bound to the westward?

Ans. I suppose it was about five minutes—five or six minutes.

Cross-int. 11. How far off was she then?

Ans. I should judge her to be in the neighborhood of a mile.

Cross-int. 12. Had you been sailing two hours within two hundred yards of the S. B. Wheeler?

Ans. Well, I couldn't say positively whether two hours or half an hour; perhaps it was an hour and a half. I had come with her from Gay Head. I didn't take particular notice, coming along with a good breeze.

Cross-int. 13. Had you been all the time within two hundred yards of her?

Ans. I had, sir; I couldn't say that I had been that close all the time; I might have been closer some of the time. I was so that I could see her very plain, and steer after her in the night.

Cross-int. 14. Did the vessels sail at exactly the same rate of speed?

Ans. Well, I don't think there was much difference between the two vessels sailing.

Direct examination resumed by Messrs. Somerby & Dabney, counsel for the claimants:

Int. 21. State how the captain of the S. B. Wheeler came to be introduced to you.

Ans. I was telling the circumstance down here, to Messrs. Ray & Walter's; after I had told the circumstances, they told me it was the S. B. Wheeler; those that I told informed Capt. Frederick Corson's father of what I had seen. The next day I met Captain Frederick's father at Ray & Walter's, and he asked me about the affair; and I told him, as I have stated here to you; he then called his son up and introduced me to him.

(Answer objected, so far as stating what the witness told.)

Int. 22. Had you any previous acquaintance with Capt. Frederick Corson?

Ans. I had not, sir.

Int. 23. When you say you and the captain of the S. B. Wheeler talked the matter of this collision over, at Ray & Walter's, what
39 do you mean by talking over?

Ans. Well, we were talking about me seeing the collision; I told him I saw it; he saw my schooner astern, but didn't know it, and I didn't know his.

Int. 24. How long a talk did you have about it?

Ans. It might have been five minutes, or ten; it was a very short conversation; we were perfect strangers.

ZIBA TAYLOR.

Deposition of Patrick Fox, taken before John W. Hudson, notary public, at Boston, Mass., July 27th, 1871.

Direct-examination by Mr. Darney, counsel for claimants:

Int. 1. State your name, age, residence, and occupation.

Ans. My name is Patrick Fox; I am a seaman; my age is twenty-seven; my residence, Caroline County, Maryland.

Int. 2. How long have been to sea?

Ans. I have been to sea about ten years.

Int. 3. In what capacity?

Ans. Ordinary seaman and seaman. Ordinary seaman, when I first went to sea.

Int. 4. Have you been as able seaman?

Ans. Yes, sir.

Int. 5. For how long?

Ans. Six or seven years.

Int. 6. In what capacity do you go to sea now?

Ans. Seaman, sir; able seaman.

Int. 7. Are you now employed on any vessel? If you are, what is her name, and how long have you been in her?

Ans. The S. B. Wheeler, sir; I am employed aboard of her, and was before she was run into, about twelve months altogether.

Int. 8. Where was she when she was run into, and where was she bound?

Ans. She was from the Vineyard Sound, very near Tarpaulin Cove, not a great way off. We could see Tarpaulin Cove light. She was bound to Boston.

Int. 9. Where was she from, and what was her cargo?

Ans. From Philadelphia, with coal.

40 Int. 10. What run into her?

Ans. I don't know the name of the schooner. It was a schooner.

Int. 11. How long ago did it happen?

Ans. About a week ago.

Int. 12. What time of day or night?

Ans. It was in the night. I should judge it was about twelve o'clock—between twelve and one; I should judge it was about that late.

Int. 13. How many seamen and officers did the Wheeler carry on that voyage?

Ans. Four seamen, two officers, and a steward.

Int. 14. How many were on deck when she was run into?

Ans. Two seamen and the captain.

Int. 15. Give the names of the seamen on deck, and state what they were doing.

Ans. I was on the lookout; the other seaman, George Gibson, was at the wheel.

Int. 16. How long had you been on the lookout?

Ans. I should suppose about two hours—may be a little more.

Int. 17. What had you been doing before that?

Ans. I had been at the wheel.

Int. 18. What course did you steer while you were at the wheel?

Ans. East-northeast, sir.

Int. 19. Did Gibson take your place at the wheel when you left it?

Ans. Yes, sir.

Int. 20. Did you give him any course?

Ans. Yes, sir.

Int. 21. What was it?

Ans. East-northeast, sir.

Int. 22. How was the wind while you were on the lookout?

Ans. I suppose the wind was about northwest; I don't know exactly.

Int. 23. How much of a breeze?

Ans. About five knots.

Int. 24. Was the night clear or thick? And was there any moon?

Ans. The night was clear. I don't think there was any moon; it was a starlight night; I don't remember any more.

Int. 25. What was the first you saw or heard of the schooner that run into you?

Ans. I saw her port light, her red light.

Int. 27. How did it bear from you when you first saw it?

Ans. I couldn't tell just exactly by the compass how it bore. It bore a little to the windward of me, over the port bows.

Int. 27. About how far off did it appear to be?

Ans. I should judge about a mile—it may be a little more. I should think it was off that far.

41 Int. 28. Did you do or say anything; if yes, what?

Ans. Yes, sir; I reported to the captain.

Int. 29. Where was the captain? And if he did or said anything, state what it was.

Ans. The captain was about amidships. I sang out, and he says, "Ay! ay!" and he walked forward and examined it.

Int. 30. Did you sing out as soon as you saw the light, or did you wait any?

Ans. I sung out as soon as I saw the light. I reported the light as soon as I saw it.

Int. 31. Did the captain do or say anything after he examined the light; if yes, what?

Ans. Yes, sir; he walked aft, and he told the man at the wheel to keep her away, to keep her off.

Int. 32. Was there any alteration then in the course of your vessel?

Ans. Yes, sir.

Int. 33. What was it?

Ans. I suppose it was about a point and a half or two points, may be, sir.

Int. 34. Which way?

Ans. To the leeward, sir.

Int. 35. What was the next thing then done by your vessel, or the one carrying the red light?

Ans. The vessel was kept off, and the captain sung out to the man at the wheel, "Steady!"

Int. 36. State what happened after that.

Ans. This vessel was on our weather bow. We could see her about off her fore-rigging. Our vessel went on her course after the captain said "Steady!" This vessel kept off right across our bows. Then our captain tells the man at the wheel, to hard-up his wheel. The man put his wheel hard up. The next thing she struck us.

Int. 37. How did the other vessel bear from your vessel when she began to keep off?

Ans. She bore right across our bow, sir; she was to the windward of us; she kept right square off.

Int. 38. How far off was she when you first saw her keeping off?

Ans. I should judge she was sixty or seventy yards; it might be more and might be less.

Int. 39. Where did the vessels come together?

Ans. We struck her—I believe it was abaft the fore-rigging.

Int. 40. How was this other vessel heading before she began to keep off?

Ans. She was heading about in the opposite direction to us—heading up a little higher towards the windward shore.

42 Cross-examination by Mr. Dodge:

Cross-int. 1. Where is the captain of the S. B. Wheeler now? And where is the man that was at the wheel?

Ans. Here is the captain of the S. B. Wheeler, and here is the man at the wheel.

Cross-int. 2. Have they both been here all the time while you have been giving your deposition?

Ans. Yes, sir.

Cross-int. 3. Have you talked this matter over with the captain?

Ans. Yes, sir.

Cross-int. 4. How many times have you?

Ans. I couldn't tell exactly, sir, how many times; but several times.

Cross-int. 5. At what time did you go on watch that night?

Ans. Eight o'clock my watch began on deck.

Cross-int. 6. Had you been on all the time from eight o'clock until the collision?

Ans. Yes, sir.

Cross-int. 7. And had the captain and the man who was at the wheel been on watch all the time from eight o'clock until the collision?

Ans. Yes, sir.

Cross-int. 8. Had no other man but you three been on deck during that time?

Ans. No, sir; nobody else.

Cross-int. 9. At what time did you go on the lookout?

Ans. Ten o'clock.

Cross-int. 10. How do you know this?

Ans. That was the time for relief. The captain says "Four bells," to the man forward. Four bells was ten o'clock. That's how I knew it.

Cross-int. 11. How much over your port bow was the red light of the other vessel when you first saw it?

Ans. Well, sir, I suppose it was from half a point to a point—as much as half a point, I am certain of that.

Cross-int. 12. How long was it from the time you first saw this light until the collision?

Ans. Well, sir, I should suppose it was very near ten minutes.

Cross-int. 13. How long did the captain stand examining the light before he gave the order to keep her away, as you have stated?

Ans. He just looked at it, sir, and walked right aft and sung out to the man.

Cross-int. 14. Did you hear the order to keep away given?

Ans. Yes, sir.

43 Cross-int. 15. Was it in the words you have stated?

Ans. Yes, sir.

Cross-int. 16. How long after this order was given before the collision?

Ans. Well, it was after this order; it was as much as five or six minutes.

Cross-int. 17. You said the other vessel, after you had kept away, was off your fore-rigging; how many points over the weather bow would this be?

Ans. From the way we could see her off our fore-rigging, I was standing aft—I should suppose she was about two points off our bow, not over two and a half.

Cross-int. 18. How came you aft at that time?

Ans. Well, sir, they don't expect a man to stay in one place. I walked up and down the deck.

Cross-int. 19. Where were you when you reported her?

Ans. I was forward.

Cross-int. 20. And did you then go immediately aft?

Ans. No, sir.

Cross-int. 21. How long before you went aft?

Ans. I should think it might have been maybe a minute or half a minute or so—about half a minute—I don't know exactly. I never paid no attention to it.

Cross-int. 22. Did you go forward again before the collision?

Ans. Yes, sir.

Cross-int. 23. And did you also go aft again before the collision?

Ans. Yes, sir.

Cross-int. 24. How many times did you go aft and forward before the collision?

Ans. I do not know; I just walked up and down the deck; didn't pay any attention to how many times.

Cross-int. 25. How long was it after the order to keep off was given, and the vessel had fallen off, one and a half or two points, as you say, before the other vessel kept off?

Ans. It was some time from the time the captain told the vessel to keep off, to the time when the other vessel kept off, some five or six minutes.

(To the interrogatory repeated.) It must have been five minutes any way.

Cross-int. 26. How many points did the other vessel bear over your port-bow when she began to keep off?

Ans. I suppose she bore about two and a half or three points, or somewhere round about there. I don't know exactly, but I judge about that.

44 Cross-int. 27. Where were you when the other vessel began to keep off?

Ans. Standing on the break of the poop.

Cross-int. 28. Does your vessel answer her helm quickly?

Ans. She answers her helm very quick, sir.

Cross-int. 29. How long do you think it was after the captain gave the order to keep off, before she was off one and a half or two points?

Ans. Well, sir, five or six seconds; not more than ten, I don't think, any how.

Cross-int. 30. Where was the captain after he had gone aft, and given the order to keep off, until the collision?

Ans. He was round about the house, very near the wheelsman; well, between me and the wheelsman. He was abaft the mainmast.

Cross-int. 31. Do you know whether your wheel was put hard-a-port under the order to do so?

Ans. Yes, sir; the wheel was put hard-a-port.

Cross-int. 32. How do you know this?

Ans. I heard the captain tell the man to put the wheel hard-a-port, and saw the man rolling his wheel up on it.

Cross-int. 33. Did you see him get it hard-a-port?

Ans. No, sir; I didn't see it only as I heard the order and saw the man rolling his wheel up on it.

Cross-int. 34. How long was it before the collision that you saw him rolling it up?

Ans. Well, a very short time, sir, a very little while; I couldn't say exactly what time it was. He told the man to put the wheel hard-a-port just when he saw the other fellow keeping off.

Cross-int. 35. State, as nearly as you can, how long it was.

Ans. It wasn't more than a minute, sir, hardly that.

PATRICK FOX.

Deposition of George N. Gibson, taken before John W. Hudson, notar public, Boston, Mass., July 27th, 1871.

Direct examination by Mr. Dabney, counsel for claimants:

Int. 1. State your name, age, residence and occupation; and if you say you are a seaman, state how long you have been to sea, and
45 in what capacity.

Ans. George N. Gibson; aged twenty-one years; I reside at New York City, and am a seaman. I have been to sea fourteen years

as ordinary seaman and seaman; about five years ordinary seaman and nine years seaman.

Int. 2. Is "seaman" the same thing as able seaman, or a different thing?

Ans. The same as "able seaman."

Int. 3. Are you employed on any vessel now? If yes, what is her name, and how long have you been in her?

Ans. The S. B. Wheeler; I have been in her a little over four months.

Int. 4. Were you in the Wheeler lately when there was a collision between her and another vessel?

Ans. Yes, sir.

Int. 5. How long ago did this collision happen?

Ans. A little over a week, I should judge.

Int. 6. Where did it happen?

Ans. In the Vineyard Sound.

Int. 7. What time of day or night?

Ans. I should judge between twelve and one o'clock at night.

Int. 8. Who was on deck at the time on board the Wheeler?

Ans. The captain and Fox, on the lookout, and me at the wheel.

Int. 9. How long had you been at the wheel?

Ans. A little over two hours.

Int. 10. How had you been steering?

Ans. East-northeast.

Int. 11. How was the wind?

Ans. About northwest.

Int. 12. How much of a breeze was there?

Ans. I should think it was about a five or six knot breeze.

Int. 13. Was the night clear or thick? And was there any moon?

Ans. Clear; I couldn't tell whether there was any moon or not; I didn't take notice.

Int. 14. Did your vessel have any lights set?

Ans. Yes, sir.

Int. 15. What lights had she set?

Ans. A red light and a green light. The green light was on the starboard side; the red was on the port side.

Int. 16. What was the first you saw or heard of the other vessel?

Ans. The first I knew of her, I heard the captain sing out to "keep off a little—keep away."

Int. 17. What did you do?

Ans. I put my wheel up.

Int. 18. How long did you keep it up; and did you fall off any;
46 and if yes, how much?

Ans. I couldn't say how long I kept it up; I suppose she went two or three times her length while I had it up. She went off, I should judge, about a point and a half or two points.

Int. 19. Did you have any order to steady? If yes, from whom?

Ans. From the captain, sir.

Int. 20. What was the next you saw or heard of the other vessel?

Ans. The first I saw of the other vessel, after the captain sung out "steady," I saw his red light on our port bow.

Int. 21. How far off did it appear to be?

Ans. Well, I should judge it was near a mile; I couldn't say exactly

Int. 22. Did you steady her when the captain gave the order?

Ans. Yes, sir.

Int. 23. Did you make any alteration in your course after that?

Ans. After the captain told me to steady? No, sir; we kept right on our course then.

Int. 24. Did the red light on your port-bow keep in sight, or did you lose it again?

Ans. No, sir; it kept in sight there, sir.

Int. 25. What was the next thing that your attention was called to?

Ans. The captain told me to "hard up."

Int. 26. Did you do anything?

Ans. I put the wheel hard up, sir.

Int. 27. Did you know or see why the captain ordered you to "hard up?"

Ans. Yes, sir; I saw them keeping away on that other vessel—his red light bearing over towards us.

Int. 28. How did the other vessel appear to be heading before she kept away?

Ans. She appeared to be heading up towards the shore—the weather shore.

Int. 29. Were you steering in such a direction that you would have struck her if she had kept her course?

(Objected to as leading.)

Ans. No, sir.

Int. 30. If she had kept her course, and you had kept yours, whether or not the vessels would have hit each other?

(Objected to as leading.)

Ans. No, sir, they would not.

Int. 31. What would they have done?

(Objected to as leading.)

Ans. Cleared one another, sir, after we kept away.

Int. 32. When you say, "after we kept away," do you mean the keeping away when the captain ordered you to hard up, or when he
47 told you to keep her off, before you saw the red light of the other vessel?

Ans. When he told me to "steady."

Int. 33. Which side of you would the other vessel have passed, if she had kept her course and you yours?

Ans. She would have passed on the weather side—our port side.

Int. 34. How far was she from your vessel when the captain ordered you to "hard up?"

Ans. Well, she might have been probably two or three times our length.

Int. 34. Was she then to windward or leeward of your vessel?

Ans. She was to windward of our vessel.

Int. 36. Where and how did the vessels strike each other?

Ans. Our jib-boom took her fore-rigging-foremast—we struck her just abaft of the fore-chains.

Int. 37. What was the effect on your jib-boom?

Ans. It broke it—broke all the head-gear pretty near off.

Int. 38. When you put the helm hard up at the time the other vessel changed her course, did the Wheeler fall off any before they struck? And if yes, how much?

Ans. Yes, sir; I couldn't tell exactly how much. She might have fell off a couple of points; I couldn't say.

Cross-examination by Mr. Dodge:

Cross-int. 1. When you say it was a five or six knot breeze, do you mean your vessel was going five or six knots?

Ans. Yes, sir.

Cross-int. 2. Does your vessel mind her helm quickly?

Ans. Yes, sir.

Cross-int. 3. Very quickly?

Ans. Yes, sir.

Cross-int. 4. How long do you think it was after the order, "keep her off," was given, before she was off one and a half or two points, as you say?

Ans. I couldn't tell exactly; I suppose she must have gone two or three times her length. I couldn't state a time.

Cross-int. 5. State the time, as nearly as you can judge it.

Ans. It may have been four or five seconds, probably; perhaps more or less—I couldn't say.

Cross-int. 6. How long after she was off one and one-half or two points before you got the order "hard up," or hard-a-port?

Ans. I should think about four or five minutes, as near as I could judge; I couldn't tell exactly.

48 Cross-int. 7. How did the other vessel bear from you, when you first saw her?

Ans. I saw her red light just forward of our fore-rigging.

Cross-int. 8. How many points over your bow?

Ans. A point and a half or two points as near as I can judge.

Cross-int. 9. How did she bear when you saw she was changing her course, as you say?

Ans. She bore about our fore-rigging.

Cross-int. 10. How many points over your bow?

Ans. A point and a half or two points.

Cross-int. 11. How long had you had the wheel hard-a-port when the vessels came together?

Ans. A very short time, sir; I couldn't tell exactly the time it was; it might have been probably two or three seconds. We went two or three times our length.

GEORGE N. GIBSON.

This libel was entered at the June term of this court, A. D. 1871, and thence was continued to the September term thereof, A. D. 1871; and now, on this seventeenth day of November, A. D. 1871, after a full hearing of the cause upon the facts proved and arguments of counsel, and mature deliberation thereon had, the court doth order, adjudge, and decree, that said libel do stand dismissed, with costs for claimant taxed at ———

On the twenty-fourth day of November, A. D. 1871, the following prayer for an appeal was filed in court viz.:

UNITED STATES DISTRICT COURT,
District of Massachusetts:

HENRY C. ROGERS ET AL.
vs.
SCHOONER S. C. WHEELER.

In the above-named action, a decree having been entered for the claimants, the libellants appeal from the same, and pray that their appeal may be allowed.

By their proctor,

JOHN C. DODGE.

NOVEMBER 24, 1871.

And thereupon said appeal was allowed by the court.

I, Edward Dexter, clerk of the district court of the United
49 States for the district of Massachusetts, hereby certify that the foregoing is a transcript of the record of the said district court in the cause Henry C. Rogers et al. vs. Schooner S. B. Wheeler, made up pursuant to Admiralty rule No. 53.

In witness whereof I have hereunto subscribed my name, and affixed the seal of the said court this fifteenth day of April, A. D. 1872.

[SEAL.] EDWARD DEXTER, *Clerk.*

FURTHER PROOFS IN CIRCUIT COURT—TESTIMONY FOR THE LIBELLANTS.

Deposition of James McLaughlin, taken before John W. Hudson, notary public, at Boston, Mass., Jan. 3d, 1872.

Direct examination by Mr. Dodge, for the libellants

Int. 1. State your name, age, residence, and business; and if you say you are a mariner, state how long you have been and in what capacity you have been to sea.

Ans. James McLaughlin, of New London, Conn.; my age is twenty-eight years; I am a fisherman; I first went to sea in 1859; I was bound apprentice in 1860, the 11th of September; I served four years and three months apprenticeship; I have been to sea from 1859 to 1872; I was mate of a vessel three months before I was out of my time; and captain of a fisherman six months after I was out of my time, for nearly three years, and for the same owner that I served my time with. That was all before I came to this country. I have since been a seaman, fishing.

50 Int. 2. Were you on board the Chas. F. Beebe when she was in collision with the S. B. Wheeler? If you were, state what you were on board her.

Ans. I was—a boat-header. I had charge of the watch at the time of the collision—the midnight watch.

Int. 3. State when and where the collision happened.

Ans. Abreast of Tarpaulin, Vineyard Sound, about the hour of one o'clock.

Int. 4. What was the weather? Which way and how strong was the wind?

Ans. We was going about four and five knots through the water, —a four or five knot breeze. The wind was northwest, a little varying to the westward. The weather was clear and starlight.

Int. 5. How was the Cha's F. Beebe on the wind; on which tack was she?

Ans. She was on the starboard tack, close-hauled to the wind, her sail on the port side.

Int. 6. How long had you been on deck when the collision happened?

Ans. Nearly an hour; I came on deck at twelve o'clock.

Int. 7. How had the vessel been on the wind all the time you had been on deck?

Ans. Close-hauled to the wind.

Int. 8. What lights, if any, had she set?

Ans. Port and starboard lights—the red light on the port side, the green on the starboard side.

Int. 9. What kind of lights were they, as to being bright or dull?

Ans. They were very good lights.

Int. 10. Who was at the wheel, and who on the lookout, when the light of the S. B. Wheeler was first seen?

Ans. George Scott at the wheel; me on the lookout, with a man by the name of Dave—Murray, I believe his name was.

Int. 11. Where were you standing when you first saw the light of the S. B. Wheeler?

Ans. On the starboard bow.

Int. 12. Which light of the S. B. Wheeler did you first see; how far off do you think it then was, and how did it bear over your bow?

Ans. I first see her starboard light on our weather bow—a point or a point and a half on our weather bow, and nearly a mile off.

Int. 13. Now state what you saw of the lights of the S. B. Wheeler from the time you first saw this light until the collision.

Ans. She kept coming on her course and would have passed us all right, till she got edging on our weather-bow, then all at once she hard up and opened her red light. And says I, "Hard up; by God
51 she's going to run over us; we can't get out of her way." And by the time I got aft, she struck us.

Int. 14. How far off do you think she was when she opened her red light as you have stated?

Ans. Well, she was nearly twice her length; she wasn't over that—might have been less. She wasn't far from it. There is no telling exactly.

Int. 15. How would she have passed you if she had kept her course—on which side and how far off?

(Objected to.)

Ans. She would have passed us on the starboard side, at twice her length.

Int. 16. State what change, if any, was made in your course after you saw her starboard light, and before she opened the red light, as you have said.

Ans. None at all, sir; not till she opened her red light.

Int. 17. How and where did the S. B. Wheeler strike the Cha's F. Beebe?

Ans. Struck her right between the fore and main rigging, amidships. Her jib-boom went right through the foresail. She nearly cut us in halves. The jib-boom went through, about three or four feet from the after-leech of the foresail.

Int. 18. State whether she struck square or glancing; and, if glancing, which way and how much?

Ans. She struck a glancing blow, about a point aft.

Int. 19. How far into the Cha's F. Beebe did she cut?

Ans. Right through the main hatchway, going through the other side.

Int. 20. What became of your vessel?

Ans. The S. B. Wheeler's jib-boom held her up. When the jib-boom went through our foresail it catched under one spring-stay; and there she hung on his jib-boom till it gave way; and when that broke the C. F. Beebe went down.

Int. 21. Do you know whether the wheel of the Cha's F. Beebe was got hard up before the S. B. Wheeler struck her?

(Objected to for form, and withdrawn.)

Int. 22. Do you know whether or not the wheel of the Cha's F. Beebe was got hard up before the S. B. Wheeler struck her?

(Objected to as leading.)

Ans. Yes, sir; I gave the word, and when I got aft the man just left it hard up—George Scott, he was at the wheel. The captain lent him

a hand to put it up. She struck us directly I got aft. Our smack wasn't above sixty feet long, or sixty-five altogether.

Int. 23. Where did you go after the collision happened?

52 Ans. Went aboard the S. B. Wheeler as quickly as possible, and ran right aft on his port side. I met the captain at the corner of the house; didn't know who he was at the time; found out afterwards—(Witness just beginning further to speak, the magistrate, who was in the act of putting the next question, asked, "What?" to which witness replied as follows:) I was going to ask: Do you want me to tell you what the captain said?

Int. 24. On what part of her did you first go, and whom did you see on the forward deck?

Ans. I got over on the port bow, and didn't see no one forward—not a living soul, only our own crew that was getting aboard of her at the same time that I was. I ran aft, and ran up a pair of steps on the port side, and see what I afterwards found out to be the captain. There we had some conversation.

Int. 25. Had you any talk with the master of the S. B. Wheeler when you met him as you have said? If you had, state what it was.

Ans. I asked him where his lookout was—the first question—when I see no one forward; and he said there was two men on the lookout. And I said there was no such thing. Says I, "Those are our men that you see getting over your bows now—getting aboard of her—that is, aboard of her." And I asked him "What the devil"—or some such word as that, (I might have swore a little)—"what he done such a foolish job as that for?" And says I, "You wouldn't have done it if you'd had a lookout on deck." He said he kept away all he could without breaking his main boom. I told him he had no business to have kept away at all, unless he kept away in time to go clear of us. And then he said, "Why don't you get aboard of your vessel?—your vessel ain't hurt much." I told him he'd cut her pretty near in halves. That's all, sir; and then we went forward; and our vessel sunk about a minute after I went forward; and we lent him a hand to do his work, after the excitement was over.

Cross-examination by Messrs. Somerby and Dabney, counsel for claimants.

Cross-int. 1. How long did the conversation that you have been telling of last?

Ans. I couldn't tell you, sir; it didn't occupy long, any way—probably a few seconds.

Cross-int. 2. And you did not find out until afterwards that the man you had this talk with was the master of the Wheeler?

53 Ans. No, sir; I didn't know but what he was the mate or some one. He was a remarkable man, so that one could tell him. I knew he was the officer of the deck. It was starlight—clear.

Cross-int. 3. How did you know he was the officer of the deck?

Ans. Well, by him giving his orders after I'd got through talking to him.

Cross int. 4. Then when you were talking with him, you didn't even know he was the officer of the deck?

Ans. I judged that he was.

Cross-int. 5. What made you judge so?

Ans. By him standing aft, towards the companion, and a man at the wheel; because, as a general thing, a sailor who has his watch on deck is not allowed to stand there unless he is doing something—at work.

and when the captain went forward after me speaking to him, he pulled his overcoat off and was in white shirt-sleeves; so he was conspicuous all the time.

Cross-int. 6. Then you knew him to be officer of the deck by the place where you found him standing, didn't you?

Ans. I judged that he was—I soon found out after I talked—began talking with him.

Cross-int. 7. When did you first find out he was the master?

Ans. When he was giving all his orders, I judged that he was captain of her, till I asked one of the crew where the mate was. He told me he was sick, and of course I knew he was captain. I did not see the mate all the time I was aboard of her. It was three o'clock in the morning when we left the S. B. Wheeler—daylight.

Cross-int. 8. Where did the fishing vessel belong that you say you went master of before you came to this country?

Ans. Belong? She belonged to London—sailed out of Yarmouth.

Cross-int. 9. What was her name?

Ans. Well, I've been in several—the Madcap—I've been in her two years. I was in the Speedwell first, and the Madcap and Ranger. They all belong to one firm.

Cross-int. 10. Who owned them?

Ans. They were owned by a company called the Deep Sea Fishing Company—a great many owners. When I was apprentice, they belonged to Hewitt & Co. Afterwards, they sold out to the Deep Sea Fishing Co.

Cross-int. 11. Where did they go fishing?

Ans. In the North Sea or German Ocean.

54 Cross-int. 12. What crews did they carry?

Ans. Seven to eight hands each.

Cross-int. 13. How long voyages did they make?

Ans. Six weeks.

Cross-int. 14. How far did they go?

Ans. In the summer time we used to fish on the Dutch coast as far east as the Island of Heligoland.

Cross-int. 15. What rig were they?

Ans. Fore-and-aft rig—cutter-rigged.

Cross-int. 16. How large were they?

Ans. Anywhere from forty to fifty tons, new measurement. The largest of them was from fifty to sixty tons, new measurement. I mean the general run of the fleet—I thought that was what you wanted to know.

Cross-int. 17. I am asking about the three vessels you say you went master of. Where did those three vessels go fishing? How many did they carry for crew? How were they rigged? And how large were they?

Ans. All of them was cutter-rigged, fore-and-aft rigged. The Madcap was seventy-six feet from stem to stern-post; eighteen feet four inch beam; drawing ten and a half feet of water. I don't know exactly her tonnage. The Ranger was a little longer, drawing nearly eleven feet of water; fifteen feet beam. The Speedwell was a smaller vessel. They carried anywhere from seven to eight, according to the quality of the men. They carried seven—sometimes eight. The company that they belonged to had a fleet, and used to send their fish away by steamboats to London. These three vessels fished with the fleet. We used to fish in fleets, the same as these mackerel fleets—only we used to send our fish to London by steamboat every morning.

Cross-int. 18. How many composed the company of the Beebe at the

time of her collision with Wheeler; and what were their names and positions on board?

Ans. Eight men: Capt. Charles Maynard; Erastus Strickland, mate; me next, (James McLaughlin;) Geo. Scott; James Bateler, cook; David Murray; a young man we called Bob—I forget his name, there are so many changes; and Antoine Silva.

Cross-int. 19. What do you mean by a boat-header?

Ans. One that takes charge of the boat when we are fishing.

Cross-int. 20. How many boat-headers were there on the Beebe on her last voyage?

Ans. Three, sir.

Cross-int. 21. When you came on deck last before the collision,
55 how long had you been below?

Ans. I had been below from eight to twelve. I came on deck at twelve.

Cross-int. 22. Where were you on the deck from that time till the time of the collision?

Ans. Well, I was all around on the deck, walking backward and forward, till I made out the S. B. Wheeler's light, on our starboard bow.

Cross-int. 23. On what part of the deck did you walk?

Ans. Well, I came right aft several times, to look at the compass. I walked on the weather-side, from forward to aft.

Cross-int. 24. Were you the first person on the Beebe to discover the Wheeler's lights?

Ans. Yes, sir.

Cross-int. 25. Where were you standing when you did discover it?

Ans. Walked forward and stood on the starboard bow. I was standing there when I first saw it

Cross-int. 26. How long had you been standing there?

Ans. Well, I had been standing there probably a minute, or a couple of minutes, I can't tell exactly how long.

Cross-int. 27. Where did you go after you saw the Wheeler's light?

Ans. Stood on the starboard bow all the time.

Cross-int. 28. Had you not been standing there before you saw the Wheeler's light for some time?

Ans. I just answered that question. I'd been standing there probably two or three minutes—I couldn't tell exactly what time.

Cross-int. 29. Had you taken in or set any sail after you came on deck, before you saw the Wheeler's light?

Ans. I took in the staysail.

Cross-int. 30. How long after you came on deck?

Ans. Somewhere in the neighborhood of half past twelve.

Cross-int. 31. After you came on deck, and before you saw the Wheeler's red light, did you see Capt. Maynard or Mr. Strickland on deck at any time?

Ans. I never see Mr. Strickland. The captain came up and told me to take the staysail in—he thought there was rather too much wind. Then he went below again.

Cross-int. 32. How long was the captain on deck at that time?

Ans. During the time I took the staysail in—in the companion-way.

Cross-int. 33. When did Mr. Strickland go below?

Ans. At twelve o'clock.

Cross-int. 34. Was Scott at the wheel, and Dave Murray for-
56 ward, all the time after you came on deck until the collision?

Ans. Yes, sir; Dave Murray helped me to take the staysail in.

Cross-int. 35. Was any one on deck besides you three during that time, except when the master came up and had the staysail taken in?

Ans. Not that I see.

Cross-int. 36. How far was your vessel from the weather shore when you came on deck?

Ans. About a mile and a half or two miles—probably more. You can't tell very well in the night-time.

Cross-int. 37. Was your schooner on the starboard tack at eight o'clock, when you went below?

Ans. When I went below we had a beating wind, with short tacks. I couldn't exactly tell what tack at eight o'clock.

Cross-int. 38. Were you beating through the Sound when you went below?

Ans. Yes, sir—at eight o'clock.

Cross-int. 39. How long had she been on the starboard tack when you came on deck at twelve?

Ans. She was on the starboard tack when I came on deck at twelve. I don't know how long she had been on that tack, as I was below, turned in, and asleep.

Cross-int. 40. What course was she heading when you came on deck at twelve?

Ans. West by south.

Cross-int. 41. Was she steering a course or sailing on the wind as close as she could get to it?

Ans. Sailing on the wind as close as she could be.

Cross-int. 42. Did the wind vary any?

Ans. Well, it didn't vary much—about half a point to the westward—pretty steady—a little variable, not much.

Cross-int. 43. When it varied, did the course of the Beebe vary?

Ans. Half a point.

Cross-int. 44. How long a time was it from the time when you first saw the Wheeler's light, to the time of seeing her red light?

Ans. Well, I couldn't tell exactly—I didn't have no time-piece. I should judge somewhere between five and ten minutes.

Cross-int. 45. How long was it from the time you saw the red light until the collision?

Ans. I had just time to run aft—to run sixty feet—sixty-five feet. I couldn't have been over—well, ten seconds.

Cross-int. 46. Did you see the Wheeler's green light at all before you saw the red one?

57 Ans. Yes, sir; I at first see her green light on our starboard bow—a point or a point and a half on our starboard bow and about a mile off.

Cross-int. 47. At the time you saw the Wheeler's red light and started to run aft, did you see her green light also?

Ans. No, sir; I didn't notice the green light.

Cross-int. 48. Wasn't the green light in sight from where you stood at the same time the red one was?

Ans. I didn't notice it.

Cross-int. 49. Did you notice any other vessel near the Wheeler when you first saw her, or after you first saw her before the collision?

Ans. There was two or three to windward of her, not near her.

Cross-int. 50. When you saw the Wheeler's red light and turned to run aft, did you see any other vessel so near her to windward as to prevent you from going to windward of her, if you had been able to do so?

Ans. No, sir; we wasn't able to do so.

Cross-int. 51. Was there any vessel to windward of her which prevented you from going to windward of her?

Ans. No, sir; only we couldn't get to windward of her.

Cross-int. 52. Did you see any vessel near the Wheeler, and to leeward of her, from the time you first saw her until the collision?

Ans. No, sir.

Cross-int. 53. How near to her was the nearest you saw to windward of her?

Ans. I couldn't exactly judge that. I can't keep the run of every vessel on the water.

Cross-int. 54. Did you see any vessel go close by you within five minutes after the collision, on either side?

Ans. I see one go past us—I believe it was to windward of us; I can't exactly tell now—about ten minutes after the collision.

Cross-int. 55. Did you see none before that?

Ans. No, sir.

Cross-int. 56. Did all the company of the Beebe get on board the Wheeler?

Ans. Yes, sir.

Cross-int. 57. Were you the first one from your vessel that got on the Wheeler?

Ans. There was three that made a break at once, me and the captain, and Scott.

Cross-int. 58. Did you all three get on board at the same time?

Ans. I don't think there was a great deal of difference.

Cross-int. 59. And did you all three go aft as soon as you got
58 on board?

Ans. I didn't take any notice of who was following me till I got aft.

Cross-int. 60. Were you the first man to get aft?

Ans. Yes, sir; I believe I was. I know I was.

Cross-int. 61. Was any one following you?

Ans. Not that I noticed.

Cross-int. 62. What became of the captain and Scott—did they come aft at all?

Ans. I noticed Scott was aft before I got through talking to the captain—and Strickland.

Cross-int. 63. Before you got through talking with what captain?

Ans. The captain of the S. B. Wheeler.

Cross-int. 64. Did they have a chance to hear what you and the captain of the S. B. Wheeler were saying?

Ans. They might have done—some part of it. I couldn't tell.

Cross-int. 65. Did any one else have a chance to hear it?

Ans. No, sir.

Cross-int. 66. Will you swear that Captain Maynard, and Mr. Strickland, and Scott, and several others did not hear the whole or a large part of your talk with the captain of the Wheeler?

Ans. No, sir; I won't swear to nothing of the sort about that—not about Captain Maynard, because I didn't notice him at all—not aft, not till I went forward.

Cross-int. 67. Will you swear that Scott and Strickland and several others did not hear the whole, or a good part of your talk with the captain of the Wheeler?

Ans. Scott and Strickland heard some part of it.

Cross-int. 68. Will you swear that no one else heard any of that talk?

Ans. I will swear that I only noticed Erastus Strickland and Scott

there. It didn't last long any way, and they was only there the latter part of it. I don't know whether they heard any part of it or not. I don't know what they did hear.

Cross-int. 69. Are you sure you had any such talk with the captain of the Wheeler as you have stated?

Ans. Yes, sir; I can swear to it.

Cross-int. 70. Have you stated it as you will swear it occurred?

Ans. Well, as nigh as I can judge the words—to the best of my ability.

59 Cross-int. 71. Have you given the words as they were said?

Ans. Yes, sir; I believe so.

Cross-int. 72. What; do you mean word for word?

Ans. As nigh as I could give it. It is a long time since the conversation occurred—nigh six months.

Cross-int. 73. Will you swear that any of these words were spoken that you have given?

Ans. Yes, sir; the sum and substance of it.

Cross-int. 74. Did you testify as a witness at the trial of this case before Judge Lowell in the district court, about the tenth to the middle of last November?

Ans. Yes, sir; in the district court. I don't know the name of the judge.

Cross-int. 75. Did you state then that you had this talk with the master of the Wheeler?

Ans. Yes, sir.

Cross-int. 76. Did you then remember this talk any better than you do now?

Ans. Well, I believe I remembered a little better the exact words; but it all conveys the exact meaning as nigh as I can give it.

Cross-int. 77. Did you state all the talk then that passed between you and the master of the Wheeler?

Ans. I believe so.

Cross-int. 78. Did you then state all the talk that you have stated now; or have you remembered any since?

Ans. I stated to the best of my knowledge, the same conveyance—the same meaning to the words—about the same substance, as nigh as I can recollect it.

Cross-int. 79. Do you remember any more of that conversation now than you did then?

Ans. Not that I am aware of. It all conveys the same meaning. It may not be in the exact words.

Cross-int. 80. Who began that talk—you or the master of the Wheeler?

Ans. I did.

Cross-int. 81. Please state now the whole of it—giving the exact words used, as well as you can, without regard to profanity.

Ans. I got aboard there and ran aft, met the captain, that I afterwards found out to be the captain, at the after corner of the house, on the port side; and I asked him "Where was his lookout?" He said, "There was two men forward on the lookout." And I said, "Two men be damned! There are our crew coming aboard of you now, and those are our men that you see forward." I said to him, "What the devil did you do such a foolish thing as that for?" Says he, "I kept her

60 away all I could,"—that he couldn't keep her away any more because he was afraid of breaking his main-boom. I said to him, "If you wanted to keep her away, why didn't you keep her away in time, so that you could have gone clear of us?" Then I told him he had

no business to keep her away at all—told him if he'd kept his course he wouldn't have touched us. I might have said a little more, and might have said less—it is so long a while ago you can't remember everything. That's about the substance of it.

Cross-int. 82. Did you testify to all that in the district court?

Ans. I testified to the substance of that.

Cross-int. 83. Did you give any more in the district court?

Ans. I might, but I don't believe I did. I can't remember now. I've been occupied in other vessels. I told the truth, as far as I knew.

Cross-int. 84. In testifying to that conversation, in the district court, did you state anything about saying to the captain of the Wheeler that he had no right to keep away at all?

Ans. I believe I did—not at the time he kept away, he didn't.

Cross-int. 85. Do you swear that in fact you said anything of that kind to the captain of the Wheeler?

Ans. I believe I did.

Cross-int. 86. Will you swear you did?

Ans. Yes, sir; I told him at the time he hard up he had no business to keep away. I'll swear I told him that. There wasn't room to keep away—not without coming into us. He'd no business to do it.

Cross-int. 87. Did you testify in the district court that you told him, if he had had a lookout on deck, the accident wouldn't have happened?

Ans. I believe I did; I'm not sure. Probably the question mightn't have been asked me.

Cross-int. 88. Were you not asked in the district court to state the whole conversation?

Ans. I believe I was; but there was a good deal that I wanted to say, that was stopped.

Cross-int. 89. Do you swear that you in fact did say to the captain of the Wheeler that the accident wouldn't have happened if he had had a lookout on deck?

Ans. Yes, sir; but I mightn't have stated it before.

Cross-int. 90. Don't you know you didn't?

Ans. I believe I did not; I'm not quite sure; I can't remember everything that was asked me.

61 Cross-int. 91. Were you stopped in the district court when you wanted to tell that?

Ans. I couldn't swear to it.

Cross-int. 92. Did you say in the district court that the captain of the Wheeler told you your vessel wasn't hurt much and asked you why you didn't get on to her?

Ans. I don't know that I did, and I don't know as I did.

Cross-int. 93. Were you stopped from telling that?

Ans. I don't know, sir.

Cross-int. 94. Will you swear that he in fact said any such thing to you?

Ans. Yes, sir; I'll swear to it.

Cross-int. 95. Has one of the owners of the Beebe been present here while you have been testifying?

Ans. Yes, sir.

Cross-int. 96. Please state his name, if you know it.

Ans. Mr. Thomas Gardner.

Crss-int. 97. Did he bring you here with him this morning from New London?

Ans. Last night, sir.

Cross-int. 98. Did the Beebe steer hard or easy; and was she slow or quick in minding her helm?

Ans. She steered easy; was an old vessel and kind o' dull.

Cross-int. 99. After you first saw the Wheeler's green light, did you see it all the time until you saw her red light just before the collision; or did you keep seeing first the green and then the red light, as she approached you?

Ans. No, sir; I see her green light till she hard up and opened her red light—see her green light all the time. I didn't see her red light, and not till she hard up.

JAMES McLAUGHLIN.

62 TESTIMONY FOR THE CLAIMANTS.

Deposition of Frederick W. Corson, taken before Charles F. Walcott, notary public, at Boston, Mass., March 29th, 1872.

Direct examination by Mr. Dabney, counsel for the claimants:

Int. 1. State your name, age, residence, and occupation.

Ans. Frederick W. Corson; thirty-four years of age; Cape May, New Jersey; master of a vessel.

Int. 2. How long have you been to sea, and in what capacity or capacities?

Ans. I have been going ten years; seaman, mate, and master; about four years as master.

Int. 3. Were you employed on board of the schooner S. B. Wheeler in July, 1871; if yes, in what capacity?

Ans. Yes, sir, as master.

Int. 4. Did the schooner S. B. Wheeler and another schooner called the C. F. Beebe come in collision while you were master of the Wheeler?

Ans. Yes, sir.

Int. 5. Please state when the collision occurred, and where.

Ans. I think it was on the 18th of July, in the Vineyard Sound, near Tarpaulin Cove.

Int. 6. How far from the north shore of Vineyard Sound; how did Tarpaulin Cove bear; and what time of the day or night was it?

Ans. It was probably a mile and a half from the north shore—I couldn't say exactly—near the middle; I do not know how the Tarpaulin Cove bore; it was between twelve and one o'clock at night.

Int. 7. Can you state the time any nearer than between twelve and one o'clock at night?

Ans. No, sir; I don't know exactly the time; it was near half past twelve, I suppose; I can't tell exactly.

Int. 8. What is the tonnage of the S. B. Wheeler; where was she from, and where bound, when the collision happened; how many
63 persons were there in her company; and what was she loaded with?

Ans. Two hundred and sixty-four tons and a fraction, new measurement; from Philadelphia, bound to Boston; seven, all told, on board; loaded with coal.

Int. 9. State the names of the persons on broad, and the capacities in which they were employed.

Ans. That is a question I can't answer. I can't name all the men on board, I have so many; I have in my recollection now only those on deck at the time.

Int. 10. State all the names you remember, and how many mates you had, how many cooks, etc.

Ans. Patrick Fox, George Gibson, one mate, one cook, and myself.

Int. 11. What kind of a night was the night of the collision; that is, was it moonlight or starlight, thick or clear?

Ans. Starlight, and clear. I don't remember about the moon.

Int. 12. You say there were seven men on board. State what capacities they were employed in on board.

Ans. Four men as seamen, one master, one mate, one cook.

Int. 13. Which way was the wind at the time of, and for half an hour before, the collision, and how hard did it blow?

Ans. Northwest; about northwest; by spells a little northward; I don't know how hard the wind was blowing. Do you mean how fast the vessel went? I don't know exactly how to answer that.

Int. 14. Was it what you call a two-knot, or a ten-knot, or how many knots wind?

Ans. About a five-knot breeze—four to five knot.

Int. 15. Who was on deck, on board your vessel, at the time of the collision? State all the persons on deck, how long they had been on deck, and where they were on deck.

Ans. The captain had been on deck since about five o'clock; Patrick Fox on deck since eight; and George Gibson on deck since eight. Patrick Fox was on the lookout forward; George Gibson was at the wheel at the time of the collision; both Fox and Gibson were on duty as above.

Int. 16. Had you any lights set?

Ans. Yes, sir, red and green; red port, and green starboard.

Int. 17. Please state what was the first you saw or heard of the Charles F. Beebe, and who first saw her from your vessel.

Ans. The man in the lookout reported a red light ahead.

Int. 18. Where were you when the light was reported; and if
64 you did anything or gave any order state what you did or ordered.

Ans. I was on deck; about midships, probably; I was walking backwards and forwards; when I saw the light, I ordered the man at the wheel to keep her off; keep her off a little.

Int. 19. How long after the light was reported was it before you saw it; how far was it from you when you first saw it; how did it bear from you; and what colored light was it?

Ans. I saw it almost immediately after it was reported; as nearly as I could judge, about a mile off; a little on the port bow, nearly ahead; a red light.

Int. 20. State all you did after the light was reported, and before you saw it.

Ans. I stepped forward and saw it almost instantly, and turned round and told the man at the wheel to keep her off a little; and he did so, until we opened that light a point or a point and a half on our weather bow; then I told him to hold her steady, and he did so.

Int. 21. State all that was said and done on board your vessel after that until the collision, and what the vessel carrying the light did.

Ans. That's about all that was said and done—about that; I had got out of his way and was looking around then for other vessels. All at once we discovered that the other vessel was keeping off. The man reported on the lookout that that vessel was keeping off; at the same time I discovered it, and ordered the man at the wheel to keep our vessel off too. I ordered our wheel hard up, and it was put hard up. For what reason he kept off, I do not know.

Int. 22. Did you, or not, say anything to the persons on the other vessel before the time of the collision; if so, what?

Ans. Yes, sir, I did; I hailed him and told him to hold his luff.

Int. 23. Did or did not the S. B. Wheeler fall off from and after the time you said her helm was put hard up; if so, how much did the Wheeler fall off, to the time of collision?

Ans. She began to fall off soon as ever the wheel was ported; how much, I couldn't say, sir.

Int. 24. How many feet did the Wheeler draw at the time of collision?

Ans. Twelve.

Int. 25. How far distant from the S. B. Wheeler was the C. F. Beebe when the man on lookout on board the Wheeler reported that the Beebe was falling off?

Ans. Well, she wasn't but a short distance off; probably three or four times her length off to windward.

Int. 26. Where did the Beebe strike the Wheeler, and which
65 side, at the time of collision?

Ans. The Beebe, in attempting to cross our bow, struck our jib-boom against her foremast, or fore-rigging, somewheres forward, breaking off our jib-boom; then we went up on to her, striking him probably between his masts.

Int. 27. How long was it from the time you first saw the Beebe before she changed her course and fell off, as you have described?

Ans. Well, I should judge from four to five minutes; I couldn't say positive.

Int. 28. Had you, or not, any intimation that the Beebe was going to change her course, and fall off, as you have described, until she did fall off?

(Ojected to, form and substance.)

Ans. No, sir.

Int. 29. How did the Beebe bear from the Wheeler when she began to fall off?

Ans. Well, she was on our weather bow, probably a point or a point and a half; I couldn't say exactly.

Int. 30. If the Beebe had held her course, and the Wheeler had held hers, would they have met, or would they have passed each other?

(Objected to.)

Ans. Passed each other, sir.

Int. 31. Which would have passed to windward of the other?

(Objected to.)

Ans. The Beebe would have passed to windward of the Wheeler.

Int. 32. How near would they have passed to each other?

(Objected to.)

Ans. Well, I couldn't say how near; far enough to have cleared each other safely; as much as was necessary to.

Int. 33. Would they have passed nearer or farther than is usual with vessels meeting each other end on?

(Objected to.)

Ans. They would have passed farther than in case of vessels meeting end on.

Int. 34. Would they have passed nearer or farther from each other than vessels usually pass, sailing in opposite directions?

(Objected to.)

Ans. Vessels would pass each other nearer, and vessels would pass each other farther off; I don't know how to answer differently; there

was plenty of room for the vessels to pass each other safely, if she had held her course.

Int. 35. How many times have you been through Vineyard Sound?

Ans. I couldn't tell you; I don't know; that's been my business for the last ten years.

Int. 36. What's been your business?

Ans. Coasting between Boston and Philadelphia, and coasting-vessels always go that way, to get between those ports.

66 Int. 37. What would be the course of a vessel bound to New York, through the Sound, from the place where this collision happened, if she had the wind so that she could steer as she liked?

Ans. Well, there are several courses; from the place where the collision happened out of the Vineyard would be W. S. W.

Int. 38. Did the Wheeler strike the Beebe straight on, or glancing; if glancing, in which direction?

Ans. Well, I suppose pretty nearly straight on; the Wheeler was in the act of falling off, when the Beebe struck our jib-boom and broke it off, then we went into him about amidships—between his masts, and it may have been glancing; that would be natural, with our vessel falling off; if glancing, it was forward.

Int. 39. Did your jib-boom go through her foresail, so as to hold her up at all, to keep her from sinking?

Ans. No, sir; it was broke off before it come to that.

Int. 40. What did you do or order done on board the Wheeler after the collision?

Ans. Ordered her sails to be taken in, sir.

Int. 41. How soon did you give that order?

Ans. Immediately—almost as soon as we come together—pretty much.

Int. 42. Was it obeyed?

Ans. It was.

Int. 43. What sail was first taken in?

Ans. The topsail-sheets were cast off, and the mainsail taken in first, if I remember rightly.

Int. 44. Did any of your crew take part in that; if yes, who of your crew?

Ans. Myself and the two men who were on deck went at it immediately, and the other men who came up as they heard the noise, assisted; all but the mate, he was sick below.

Int. 45. What became of the crew of the Beebe?

Ans. They came on board the Wheeler, and stayed there till daylight, when they left my vessel in a boat, and went on board a western-bound vessel.

Int. 46. Did you hear James McLaughlin testify in the district court in this case?

Ans. Yes, sir.

Int. 47. Did you have any conversation with James McLaughlin on board your vessel after the collision?

Ans. Not to my knowledge.

Int. 48. Did he or any one from on board the Beebe ask you where your lookout was?

Ans. No, sir.

Int. 49. Did you tell McLaughlin, or any one else, that you had two men on the lookout?

(Objected to, for form.)

Ans. I don't remember having any conversation with McLaughlin

67 at all; the only man I remember having any coversation with, from that vessel was the captain.

(Question repeated.) I don't know whether I told the captain or not; I couldn't say about that, sir.

Int. 50. Did you ever claim to have had two men on the lookout?

Ans. Not outside of myself and one man; no, sir; I did not.

Int. 51. Did McLaughlin, or any one else, ask you what the devil you did such a foolish job as that for, and say to you that you wouldn't have done it if you had had a lookout on deck?

(Objected to, for form.)

Ans. No, sir; there was no such language used in my presence.

Int. 52. Did McLaughlin, or any one else, tell you you had no business to keep away at all unless you kept away enough to go clear?

(Objected to, for form.)

Ans. No, sir.

Int. 53. Did you ask McLaughlin, or any other man from on board the Beebe, why he didn't go back on board the Beebe, and that the Beebe wasn't hurt much?

(Objected to, for form.)

Ans. No, sir.

Int. 44. State what conversation you had with the master of the Beebe concerning the collision.

Ans. I asked the captain how that happened; how he came to make that kind of a move, and he said he was below at the time, and the man put his wheel the wrong way—those was about the words he used.

Int. 55. Did you have any other conversation in regard to the collision with any one of the officers or crew of the Beebe?

Ans. No, sir.

Int. 56. Did you see any other vessel near you, before the collision? If you did, state where you saw her, in what direction she was sailing, and what became of her after the collision.

Ans. There was a schooner right stern of us, that had been steering right after us before the collision for an hour or two, probably longer—for two or three hours—she was sailing almost in the same direction as we were; I don't know what became of her after the collision; I had enough to look after without looking after vessels astern.

Int. 57. Do you now think of anything you might have done, before or after the Beebe changed her course, which you did not do to avoid the collision?

(Objected to.)

Ans. If I had known she was going to alter her course I might have done different, but I did what was right; I couldn't have done anything different then.

(Answer objected to, as in part not responsive.)

68 Int. 58. Do you now think of anything you might have done, to avoid the collision, after she changed her course, which you did not do?

(Objected to.)

Ans. No, sir.

Int. 59. How came you in Boston to-day?

Ans. I came here—I was notified by Mr. Dabney that I must come here to have my deposition taken as soon as possible, and for nothing else; I came from Wilmington, North Carolina, for that purpose by boat and rail.

Int. 60. State whether you came for any other purpose; and whether you came in your schooner, or by public conveyance.

Ans. I came for no other purpose; and I came by public conveyance.

Cross-examination by Mr. Dodge, counsel for libellants and appellants:

Cross-int. 1. Did you not testify in the district court, in this case, that you and the lookout first saw the light of the Beebe at the same time?

Ans. I couldn't say positively as to that, sir.

Cross-int. 62. If you did so testify, was it true?

Ans. If I said so there, it was to the best of my ability, of course, at the time.

Cross-int. 63. Do you know any more about it now than you did then?

Ans. No, sir.

Cross-int. 64. Had you in fact seen her before you heard the report of the lookout?

Ans. No, sir.

Cross-int. 65. Did you see her at the same time you heard the report of the lookout?

Ans. Not exactly; no, sir; almost; I just stepped to one side and saw it in an instant.

Cross-int. 66. Where was the lookout standing when he first reported her?

Ans. Forward, sir.

Cross-int. 67. How far forward was he?

Ans. Well, I couldn't exactly say, sir; he was forward, walking backward and forwards, keeping a good lookout.

(Last clause objected to, as not responsive.)

Cross-int. 68. Was he before or aft the mainmast?

Ans. Before.

Cross-int. 69. Was he before or aft the foremast?

Ans. Before.

Cross-int. 69. How far back did he walk?

Ans. I don't know, sir.

Cross-int. 71. How do you know he was walking back and forward?

Ans. I seen him.

Cross-int. 72. Why then can you not say how far back he walked?

Ans. Because I didn't notice.

69 Cross-int. 73. Did he walk back of the foremast at all while on lookout?

(Objected to, as immaterial.)

Ans. He might.

Cross-int. 74. Are you still master of the S. B. Wheeler?

Ans. Not at this present time.

Cross-int. 75. When did you leave her?

Ans. Last Tuesday, I think it was.

Cross-int. 76. Is there another master appointed?

Ans. Yes, sir.

Cross-int. 77. Who and why were you displaced, or why did you resign?

Ans. He is a man that was my mate; his name is Corson. To come here and have my deposition taken is about the best answer I can make to that.

Cross-int. 78. Then are you master of her when you get back?

Ans. I don't know anything to the contrary but what I will be.

Cross-int. 79. Do you then mean that you have left your mate temporarily in charge while you came here to give your deposition?

Ans. Yes, sir.

Cross-int. 80. When was this case tried in the district court?

Ans. I think it was in November.

Cross-int. 81. How many times have you been in Boston since?

Ans. This is the first time since November. I don't remember being here since the trial; I am not certain; I might have been here once.

Cross-int. 82. Then you do not spend all your time coasting to Boston, do you?

Ans. Not all—principally.

Cross-int. 83. After you had given the order, "Keep her off a little," and she had been kept off, what did you do until you saw the Beebe was keeping off?

Ans. After the vessel had fell off as much as I thought necessary to clear the Beebe, I told him to keep her steady; he did so, and I was then looking round for other vessels, as I saw that I was out of his way.

Cross-int. 84. Did you hear anything more of the Beebe after that until you saw she was keeping off?

Ans. The man on the lookout reported that the schooner was keeping off about the same time that I discovered it.

Cross-int. 85. Did you hear anything more about her until you heard she was keeping off?

Ans. No, sir.

70 Cross-int. 86. Did you see her after you went to looking for other vessels, until you heard she was keeping off?

Ans. Yes, sir.

Cross-int. 87. When did you see her; how long before you heard she was keeping off?

Ans. Well, I see her right away after I kept away for her. I could see her as I walked about; probably a minute or two after I kept away for her I could see her right along.

Cross-int. 88. Then you did not spend all your time looking after other vessels?

Ans. Well, as I was walking round, looking for other vessels, she would come in my view. I couldn't help seeing her, as she was right in the track.

Cross-int. 89. In what track?

Ans. Well, of vessels going through the Vineyard.

Cross-int. 90. Did you not testify in the district court, that after you saw she was out of your way, you did not see her again, or trouble yourself about her until you heard she was keeping off?

Ans. I don't remember, sir, what I testified to then as regards that.

Cross-int. 91. Will you swear that you did not so testify?

Ans. No, sir.

Cross-int. 92. Did you keep off when you first saw the Beebe's light because you were running free, and she was close-hauled on the wind?

Ans. Yes, sir.

Cross-int. 93. Did you offer the officers or crew of the Beebe food or shelter while they were on board your vessel?

Ans. No, sir.

Direct examination resumed by Mr. Dabney, counsel for respondents:

Int. 94. Did you or your crew have food during that time?

Ans. No, sir.

Int. 95. When were you last in Boston before you came this time?

Ans. I think it was in November.

Int. 96. When you first saw the Beebe, how close to the wind was she sailing.

(Objected to, on ground that it relates to a matter not raised on cross-examination.)

Ans. I couldn't tell you, sir. She was heading up so that she showed nothing but her red light to me.

Int. 97. How close to the wind did you judge her to be sailing?

(Objected to, as last.)

Ans. Well, from the way the wind was, I should suppose her to have been sailing within five points.

F. W. CORSON.

71 This cause, entered in this circuit court as aforesaid, came on to be heard upon the said transcript of the record of the district court, and further proof taken in this court, and was fully heard before the circuit court at the present term, the honorable Nathan Clifford, associate justice, holding said court. And now, to wit, June 14th, it is ordered, adjudged, and decreed by the court that the decree of the district court in this cause be, and the same is hereby affirmed, and that the said Jacob S. Welden, William S. Hilles, John A. Harris, George W. Churchman, Peter N. Gamble, Edwin F. Miller, and Nathaniel Horner, claimants, appellees, recover of the said Henry C. Rogers and Thomas S. Rogers, C. Arnold Weaver and Thomas W. Gardner, and Charles A. Maynard, and Erastus Strickland, and James Mc*Loclin*, George Scott, Anto'ne Silva, Robert Regan, James Butler, and David , libellants, appellants, the sum of costs, decreed in the district court, and the sum of for their costs of suit in this court.

72 Whereupon the said libellants, appellants, in open court claim an appeal to the Supreme Court of the United States, which appeal is allowed by the court, and said libellants give good and sufficient security to prosecute their said appeal with effect, and to pay all damages and costs in case they shall fail to make good their said appeal, which security is approved by the court.

A true record. Attest:

JOHN G. STETSON,
Clerk.

73 UNITED STATES OF AMERICA,
Massachusetts District, ss:

I, John G. Stetson, clerk of the circuit court of the United States for the first circuit and district of Massachusetts, certify that the foregoing is a true copy of the record and of all proceedings in the cause of Henry C. Rogers et al., libellants, appellants, v. The schooner S. B. Wheeler, Jacob S. Welden et al., claimants, appellees, in this court determined.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court at Boston, this twenty-ninth day of November, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States the ninety-seventh.

[SEAL.] JOHN G. STETSON,
Clerk.

74 *Bond to party on appeal.*

Know all men by these presents, that we, Joshua Baker and Joshua Baker, jr., both of Boston, in the county of Suffolk & Commonwealth of Massachusetts, are held and firmly bound unto William S. Hilles, of Wilmington, in the State of Delaware, in the full and just sum of five hundred dollars ($500) to be paid to the said William S. Hilles, his certain

attorney, executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents, sealed with our seals, and dated the twenty-seventh day of November, in the year of our Lord one thousand eight hundred and seventy-two.

Whereas, lately, at a circuit court of the United States, holden at Boston, within and for the district of Massachusetts, in a suit depending in said court between Henry C. Rogers and Thomas S. Rogers, both of the city and State of New York, copartners and others, libellants, against the schr. S. B. Wheeler and said William S. Hilles, claimant of said schr., decree was rendered against the said libellants, and the said libellants having obtained an appeal to remove the said cause to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said William S. Hilles, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next:

Now the condition of the above obligation is such, that if the said libellants shall prosecute their said appeal to effect, and answer all costs if they fail to make their plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

JOSHUA BAKER. [L. S.]
JOSHUA BAKER, J'R. [L. S.]

Signed, sealed, and delivered in presence of—
F. DODGE.

Approved:
L. S. DABNEY,
Proctor for Clm'ts.

Associate Jus. Sup. Court of the U. S.

A true copy of the bond taken by the judge at the time of allowing the appeal named in said bond, which bond is on file in the office of the clerk of the circuit court of the United States for the first circuit and district of Massachusetts.

Attest:

JOHN G. STETSON,
Clerk U. S. C. C., Mass. Dist.

(Indorsement on cover:) No. 326. Henry C. Rogers, Thomas S. Rogers, C. Arnold Weaver, and Thomas W. Gardner, et al., appellants, vs. The schooner S. B. Wheeler, William S. Hilles, Jacob S. Welden, & al., clm'ts. Massachusetts C. C. U. S. Filed 4th December, 1872.

REC. 326—5

HENRY C. ROGERS, THOMAS S. ROGERS, C. ARNOLD WEAVER, AND THOMAS W. GARDNER ET AL.,

APPELLANTS,

v.

THE SCHOONER S. B. WHEELER — WILLIAM S. HILLES, JACOB S. WELDEN ET AL.,

CLAIMANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

IN ADMIRALTY.

APPELLANTS' BRIEF.

BOSTON:
ALFRED MUDGE & SON, PRINTERS, 34 SCHOOL STREET.
1874.

SUPREME COURT OF THE UNITED STATES.

No. 326. OCTOBER TERM, 1873.

HENRY C. ROGERS, THOMAS S. ROGERS, C. ARNOLD WEAVER, AND THOMAS W. GARDNER ET AL., APPELLANTS.

v.

THE SCHOONER S. B. WHEELER,—WILLIAM S. HILLES, JACOB S. WELDEN ET AL., CLAIMANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF MASSACHUSETTS.

IN ADMIRALTY.

APPELLANTS' BRIEF.

The libel was filed July 21, 1871.

The answer was filed Aug 4, 1871.

On the 17th of Nov. 1871, the District Court, after a hearing, dismissed the libel.

An appeal was then taken to the Circuit Court, where, on the 14th of June, 1872, the decree of the District Court was affirmed, and thereupon a further appeal was taken to this Court.

BRIEF STATEMENT OF THE CASE.

FACTS NOT IN CONTROVERSY.

The appellants prior to, and at the time of the collision, below set forth, were the owners of the schooner Charles F. Beebe, of the burden of about 41 tons, and of property on board her. The appellees were owners of the schooner S. B. Wheeler, of the burden of 264 tons.

On the morning of the 18th of July, 1871, between twelve and one o'clock, these two vessels came in collision, at a place about eight miles northeasterly from Gay Head, and the Charles F. Beebe was by the collision sunk, and with the property on board, totally lost.

The wind was at the time about northwest, a strong breeze. The weather was clear, and both vessels had their regulation lights set.

The Charles F. Beebe was on a voyage from Nova Scotia to New York, with a cargo of fresh halibut. The S. B. Wheeler was on a voyage from Philadelphia to Boston, with a cargo of coal.

The Charles F. Beebe was sailing on the wind, on her starboard tack. The S. B. Wheeler was sailing free on her port tack, and heading east-northeast. The S. B. Wheeler struck the Charles F. Beebe on her starboard side nearly square across.

Facts in Controversy.

On the part of the libellants, owners of the Charles F. Beebe, it is claimed that she was sailing close-hauled on the wind; that her crew first made the green light of the S. B. Wheeler a little over their starboard bow, a mile or so distant; that they kept their vessel on her course until a change of course on the part of the other vessel, by keeping off from the wind, was bringing her down upon them, she being then only one hundred to one hundred and fifty feet from them, and a collision inevitable, when their helm was put up to get out of the way, as the only hopeful thing to be done. That they could not then come into the wind on account of the close proximity of the S. B. Wheeler. That the Charles F. Beebe had got off about two points, when the collision took place; and that if the S. B. Wheeler had kept her course, there would have been no collision.

On the part of the claimants, the case stated is that the crew of the S. B. Wheeler saw first the red light of the Charles F. Beebe; that she was then a little on their port bow, and about a mile distant; that thereupon their vessel was kept off a little, so as to bring this red light more on their port bow; that they then kept their vessel on her course until the Charles F. Beebe, being then only sixty or seventy yards distant, suddenly changed her course by falling off from the wind; that they then put their helm hard to port, and began to fall off, but the Charles F. Beebe, continuing to fall off, brought herself across the bows of the S. B. Wheeler, and so caused the collision; that if she had kept her course there would have been no collision.

Questions of Fact.

The principal questions of fact raised between the parties are:—

First. Was the Charles F. Beebe close-hauled on the wind?

Second. Which vessel was to windward before either kept off, and which, if either, fell off from the wind so as to put the other in peril?

Third. Did either party fail in keeping a proper lookout?

Questions of Law.

First. The appellants claim that, under the facts proved, the Charles F. Beebe had the right of way, and the S. B. Wheeler was bound seasonably to give way to her.

Second. That the S. B. Wheeler, upon the evidence of the claimants alone, was in fault: —

1. In not keeping a proper lookout.
2. In coming into dangerous proximity to the Charles F. Beebe before the latter made any change of course.

ALLEGED ERRORS IN THE DECREE OF THE CIRCUIT COURT.

1. In that it affirms the decree of the District Court dismissing the libel
2. In that it did not sustain the libel, and order the libellants' damages to be paid, either in full or in part.

ARGUMENT FOR APPELLANTS.

I.

It is alleged by the libellants that the Charles F. Beebe was sailing close-hauled on the wind on the starboard tack. Libel, p. 2, art. 2. This direct and positive allegation was not denied in the answer. Indeed, it was supposed that it was admitted by the words: "They also admit that the night was clear, and that the schooner Charles F. Beebe was sailing on the wind on her starboard tack" Ans. p. 8, art 3. It was also, as we shall presently see, stated by the claimants' principal witness. Under these circumstances the libellants were taken by surprise in the Circuit Court to find this important fact strenuously denied in argument.

The libellants claim that, in the present state of the pleadings, the claimants ought not to be heard to deny that the Charles F. Beebe was close-hauled on the wind. But not knowing what view this Court may take of that question, they present their evidence.

McLaughlin, who was in charge of the deck, says he had been on deck nearly an hour, and while he was on deck, the vessel was "close-hauled to the wind": p. 50, ints. 5, 6, 7. When he came on deck at twelve o'clock her course was "west by south," and she was "sailing on the wind as close as she could be": p. 56, cross-ints. 39–41.

Cross-int. 42. "Did the wind vary any?" Ans. "Well it did n't vary much — about half a point to the westward — pretty steady — a little variable, not much."

Cross-int. 43. "When it varied, did the course of the 'Beebe' vary?" Ans. "Half a point."

Scott, the man at the wheel, says (pp. 10, 11, 12, ints. 4, 5, 9, 18), "the wind was northwest, varying . . . . from half to three fourths of a point." Our vessel was "heading west by south, half-south. She had a good full; she was close-hauled on the wind."

"She had been beating up all night." "On that tack about half an hour or an hour." Also p. 14, cross-ints. 27–30.

The captain of the Charles F. Beebe says (p. 20, ints. 6, 7), that he had been on deck all the fore part of the night, and that he went below about "at half past twelve": that when he went below, the vessel was "lying full and by, close-hauled": p. 21, int. 30.

To this testimony of the crew of the Charles F. Beebe, we add that of the captain and lookout of the S. B. Wheeler. Capt. Corson says (p. 70, int. 92, cross-int. 97) he kept off when he saw the light of the "Beebe" because he was running free and she was close-hauled; "from the way the wind was, I should suppose her to have been sailing within five points."

Now, everybody knows that no vessel built for work, sails nearer to the wind than that.

Fox, the man on the lookout, says (p. 41, int. 40), before she began to keep off, she was sailing nearly in the opposite direction to his vessel; "a little higher towards the windward shore." His vessel was heading "east-north-east," and the wind was "about north-west." Dep. of Gibson, p. 45, ints. 10, 11. Exactly opposite, is of course west-south-west, or six points from the wind, and she was heading higher up towards the windward shore.

Indeed, if the Charles F. Beebe was not close-hauled on the wind, the allegations and evidence of the claimants that they saw *only* her red light cannot be true. If she were six points from the wind, they must have seen both her lights *all* the time. If she had been more than five points from the wind, the necessary irregularities of steering, especially with a varying wind, must sometimes have opened the other light.

It was urged against all this evidence as to the course of the Charles F. Beebe, that Capt. Corson has testified that one course out of the sound from the place of the collision, was west-south-west (Corson, p. 66, int. 37), and that Capt. Maynard said (p. 23, ints. 5, 8, 9), that after beating all day he had, a half an hour before, got his vessel into such a position that he could fetch through the sound.

The answer to this is, that Maynard does not say that he could fetch through if he did not keep close on the wind; and he swears that he did keep so. And if Corson's statement is true, that he *might* fetch through, sailing six points from the wind, it does not avail against Corson's statement, that when he first saw the Charles F. Beebe, she was in fact sailing, within five points from the wind.

Even if it were possible to head out of the sound six points from the wind, a prudent man, with a varying wind, would do exactly what everybody on both vessels swears Capt. Maynard did, — keep as near the wind as possible, lest he should be headed off.

2. The course of the S. B. Wheeler was E. N. E., and the wind N. W. Dep. of Gibson (man at the wheel), p. 45, ints. 10, 11.

Thus she had the wind abundantly free, — in fact, two points behind the beam.

3. It appears, then, that these vessels were approaching each other from nearly opposite directions. Their courses varied from parallel lines only about one point. They were approaching each other, nearly end on; and if they were approaching so as to involve risk of a collision, they came under the eleventh article of the sailing rules. If there is no exception to that rule, it was the duty of each vessel to port the helm, and go to the right. But it is apparent that a vessel close-hauled on the starboard tack, cannot go to the right without throwing the wind out of her sails, and so becoming unmanageable. This might expose the vessel to great danger from many sources. It cannot have been the intention that when two vessels meet, as in this case, one with the wind so free that she can change her course many points without loss of control, or time, and the other so on the wind that to go to the right makes her helpless, and puts her in peril, the latter should give way to the former.

Accordingly, we find that the Courts, in the construction of this rule, make an exception in favor of a vessel close-hauled on the starboard tack, as in this case.

The Amalia *v.* the Catherina Maria (Mar. 26, 1866), Holt's Rule of the Road, 87, 89.

The Norge *v.* the Wolverine (Dec. 6, 1866), Holt's Rule of the Road, 89, 91.

Perhaps the case is to be governed by art. 19 of the statute. The vessel close-hauled on the starboard tack cannot go to the right without putting herself in "immediate danger," by making herself unmanageable.

Seamen as well as Courts recognize the exception to the rule stated in art. 11. In this very case, the master of the S. B. Wheeler understood it to be his duty to give way. He saw that the Charles F. Beebe was close-hauled on the wind. Dep. of Corson, p. 70, cross-int. 92. If the vessel running free does not give way, but comes into dangerous proximity to the close-hauled vessel, it would, of course, be the duty of the latter, in the last resort, to luff into the wind, and make herself helpless for the time, if, by so doing, a collision could be avoided, or the blow relieved.

The Maria Martin, 12 Wall. 31, 47.

4. The libellants claim, then, that the Charles F. Beebe had the right of way; and in this view of the law and of the rights and obligations of the parties, the following allegations in the libel were drawn: The said schooner, Charles F. Beebe, could not go to starboard, when the lights of the S. B. Wheeler were first seen,

because she was close-hauled; and when it became apparent that the S. B. Wheeler was about to run into her, she could not go to starboard and throw the wind out of her sails, on account of the proximity of the S. B. Wheeler (p. 3). It had been before alleged (p. 2), that after the S. B. Wheeler changed her course, "the helm of the said Charles F. Beebe was put to starboard, as the only thing that could be done with any hope of escaping the collision or relieving the force of the blow."

I am particular in calling the attention of the Court to these allegations, because they seem to have been misunderstood by the District Judge.

It was then the duty of the S. B. Wheeler to keep off *seasonably* and *sufficiently*.

II.

The collision was caused by the sudden keeping off of the S. B. Wheeler, when the vessels were close together.

1. We have the direct testimony of all the men on the Charles F. Beebe, who were in a position to see, that when they first saw that the S. B. Wheeler was keeping off, and before their vessel had changed her course, she (the S. B. Wheeler), was seen on their starboard (windward) bow. Dep. of Scott, p. 11. ints. 10–16; p. 15, cross-int. 50. (40.) Dep. of McLaughlin, pp. 50–51, ints. 12–15. Dep. of Murray, p. 26, ints. 5–8. Add to this testimony, that of Capt. Maynard, who was on deck before the order to put the wheel up was executed, and so, of necessity, before there had been any considerable change of course, that when he got on deck, the S. B. Wheeler was only fifty or sixty feet from them, coming nearly straight for them, swinging a little. Dep. of Maynard, p. 21, ints. 17–21. She struck the Charles F. Beebe on the windward side.

It would, indeed, be a marvellous thing if the officer of the deck of the Charles F. Beebe, himself forward on the lookout, gave the order to put the wheel hard up, to run this little vessel across and under the bows of a vessel six times as large as the Charles F. Beebe."

2. The testimony on both sides shows that the S. B. Wheeler struck the Charles F. Beebe on her starboard side, and nearly at right angles. Glancing a point, or a point and a half, towards her stern, say the witnesses for the appellants. Dep. of Maynard, p. 21, ints. 21, 22. Dep. of Strickland, p. 31, int. 11. Glancing forward, if anything, says the witness for the appellees. Dep. of Corson, p. 66, int. 38.

It follows that the aggregate change of course was seven or eight points. The vessels were sailing on courses nearly parallel, and the S. B. Wheeler struck the Charles F. Beebe about at right angles.

3. If, then, we can determine which vessel made the greater

change of course, it will aid us to determine which vessel's original course was the further to windward.

Let us then examine and compare the evidence on this point. We claim that the evidence clearly shows that the Charles F. Beebe did not change her course more than one and a half or two points; and that all the rest of the change was made by the S. B. Wheeler.

First. How much then did the Charles F. Beebe change?

Scott, the man at the wheel of the Charles F. Beebe, says: "She changed it a point and a half; she might two points, — no more than two points." Dep. of Scott, p. 11, ints. 16, 17. This witness had the means of knowing what he says, and should be believed, unless he is shown to be unworthy of belief. There is no reliable testimony in conflict with him.

The Neptune, Olcott, 495.
The Fannie, 11 Wall. 238, 242.

Then he is confirmed by the evidence of all the witnesses in the Charles F. Beebe as to the length of time that elapsed after the order to put the wheel hard up was given before the collision. They do not give us an estimate of time, but they show what there was time to do, which is much more reliable. The officer of the deck says he was standing forward, watching the S. B. Wheeler; she then showing her green light, and apparently pursuing a course that would carry her in safety to windward of the Charles F. Beebe, when she suddenly showed her red light, being then not more than twice her length off; that he shouted to the man at the wheel of the Charles F. Beebe, "Hard up! by God, she is going to run over us; we can't get out of her way," and by the time he could get aft, she struck. Dep of McLaughlin, pp. 50, 51, ints. 13, 14, 16, 22; p. 56, cross-int. 45.

Scott, the man at the wheel, says, when the S. B. Wheeler was fifty yards off, he saw she was coming down upon the Charles F. Beebe; at the same time heard the order to put the wheel hard up, —got it up by the aid of the captain, and then she struck. Dep. of Scott, pp. 11, 12, 13, ints. 13–17, 19, 28; p. 17, cross-ints. 66–78.

Maynard, the captain of the Charles F. Beebe, says he was lying awake in his berth, with his shirt, pants, and stockings on; that he heard the order "hard up," and went on deck without stopping to put on an article of dress; that he had to go up only three steps to the front of the wheel; that he was on deck in four or five seconds after the order "hard up" was given, and he helped perform it, and when he got on deck, the S. B. Wheeler was within fifty or sixty feet of the Charles F. Beebe; that after the wheel was up, he started forward, and had only time to go about seven or eight feet before

the collision took place. Dep. of Maynard, pp. 20, 21, 25, ints. 7–18, 24–28, cross-int. 42; p. 24, cross-int. 22.

Strickland, the mate, was in his berth asleep. He heard the cry, "My God, she is coming into us!" or words to that effect. He thought it came from the man at the wheel. It waked him out of his sleep. He rushed on deck just in time to see the S. B. Wheeler within a rod of his vessel. Dep. of Strickland, pp. 30, 31, ints. 3–9; p. 33, cross-ints. 9, 12.

Now these two vessels were approaching each other at the rate of about twelve hundred feet in a minute (Dep. of Scott, p. 11, int. 6. Dep. of Gibson, p. 47, cross-int. 1), two hundred feet in ten seconds, and upon the above evidence the wonder is that the Charles F. Beebe was able to change her course one and a half or two points, before the collision. It would seem certain that she could not have changed more than that.

Second. How much did the S. B. Wheeler change her course before the collision?

We naturally look for the answer to this question, first to the man at the wheel. Gibson, the man at the wheel, says, in relation to the first keeping off, "She went off. I should judge about a point and a half or two points." Dep. of Gibson, p. 45, int. 18. When he put his wheel hard up, he says, "She might have fell off a couple of points; I couldn't say." Dep. of Gibson, p. 47, int. 38. This is indefinite and unsatisfactory. The captain of the S. B. Wheeler says: "She began to fall off soon as ever the wheel was ported; how much I couldn't say." Dep. of Corson, p. 64, int. 23. This is equally indefinite.

But several witnesses have sworn that Corson, master of the S. B. Wheeler, said in their hearing that he kept off all he could without jibing over his main boom. Dep. of Strickland, p. 31, int. 14. Dep. of Scott, p. 12, int. 24. Dep. of McLaughlin, p. 52, int. 25.

Capt. Corson was examined long after this testimony was taken, and does not deny this statement, but only makes a general denial of conversation with the officers and crew of the Charles F. Beebe, saying in one place that he had no conversation with them, and in another that he did not remember any. Dep. of Corson, pp. 66, 67, ints. 49, 55.

The denial of a conversation can ordinarily mean no more than "do not remember." We have here the affirmative testimony of three witnesses that Capt. Corson made that statement. Now a vessel with the wind two points behind the beam will be in no danger of jibing her mainsail in keeping off six, seven, or eight points.

Then we have the testimony of Ziba Taylor, produced by the claimants. His statements show that the S. B. Wheeler was to windward of the Charles F. Beebe before either vessel changed her course. He says in substance, that on the night of the collision, '

was master of a vessel called the Hannah P. Hand, and for some two hours before the collision had been following the S. B. Wheeler, keeping her about half a point on his port bow, not more than two hundred yards off; that he saw the red light of the Charles F. Beebe from half a mile to a mile off, nearly directly ahead of the S. B. Wheeler, about five minutes before the collision; that in one or two minutes she luffed to the westward and shut her light in behind the S. B. Wheeler; that the next thing he saw was the S. B. Wheeler *fall directly off across his bows.* He took the wheel and kept his vessel off to keep clear of the S. B Wheeler, and next he saw the green light of the "Beebe" as she came out across the bow of the S. B. Wheeler. Dep. of Ziba Taylor, p. 35, ints. 8, 9.

Now it is certain, from this statement, that the Charles F. Beebe, when within half a mile or a mile of the S. B. Wheeler, and within five minutes of the collision, was seen to leeward of the sails of the S. B. Wheeler from a vessel that was within half a point of being directly behind the S. B. Wheeler; and that, when her sails, including her large mainsail, must have been, from her course, and the direction of the wind, trimmed with sheets out, and all the lower sails on the leeward side of her; and further, that the Charles F. Beebe was never at any time seen from this vessel to windward of the S. B. Wheeler, although there was nothing on the windward side of the masts of the latter vessel to obstruct the sight. It is further to be noticed that the witness attributes the disappearance of the light of the Charles F. Beebe behind the sails of the S. B. Wheeler to the luffing of the former vessel. But it is proved that she did not luff, by all the persons on her deck. Dep. of Scott, p. 12, int. 19. Dep. of McLaughlin, p. 51, int. 16. We have shown that she was close-hauled before. Indeed, nobody on the S. B. Wheeler thought she luffed. The disappearance of her red light may have been caused by a slight varying of the wind to the westward, or a slight change of the position of the Hannah P. Hand; or, more likely, by the approach of the vessels to each other.

4. So far, we have discussed the question of how much the S. B. Wheeler kept off, only in relation to the keeping off under the final order to put the wheel hard up. For if her wheel was put up, when at a reasonable distance, and put up enough to clear the Charles F. Beebe, without coming into dangerous or alarming proximity, she would have been doing her duty.

Accordingly, it is claimed that her first change of course was made by putting her wheel a little to port, under which she fell off a point and a half, or two points. Dep. of Gibson (at the wheel), p. 45, int. 18. This, according to Captain Corson, brought the Charles F. Beebe a point, or a point and a half on his weather bow, and he then continued his course four or five minutes without further change, until the Charles F. Beebe was within three or four times her length of his vessel, still bearing a point or a point and a half

over his weather bow. Dep. of Corson, pp. 64, 65, ints. 20, 21, 25, 27, 28, 29.

But the testimony of Ziba Taylor, called by the claimants, and much relied on by them in the Circuit Court, proves conclusively, that they are mistaken about this first keeping off; or, at all events, about the length of time between it, and putting their wheel hard up. Nothing is easier than for a witness to misjudge or mistake in an estimate of time. If Taylor tells the truth, if there was any interval between the first and second changes of wheel, it could not have exceeded one or two seconds. Taylor was following the S. B. Wheeler, keeping her half a point on his port bow; so it is certain no change of her course to leeward, could escape his notice. He saw no change in her course until she fell directly "off across his bows." Dep. of Taylor, p. 35, ints. 8, 9.

Indeed, Capt. Corson's own testimony leads inevitably to the same result. He says when he first saw the red light of the Charles F. Beebe it was nearly ahead, a little on his port (windward) bow; that he ordered the wheel put to port and then steadied; that when this was done, this red light was a point or a point and a half on his weather bow; and again when the Charles F. Beebe began to fall off, when, as he says, the vessels were close together, she still bore a point or a point and a half on his weather bow. Dep. of Corson, pp. 64, 65, ints. 19, 20, 29.

The man at the wheel of the S. B. Wheeler, says, when nearly a mile from the Charles F. Beebe he kept his vessel away one and a half or two points; this, if true, would put the vessels on diverging courses, and the divergence would be a point or a point and a half — say one point.

Now, it is certain that if two vessels are approaching each other on parallel courses even, if one of them seen from the other bears any number of points or degrees over the bow of the latter, this angle increases in proportion as the distance between them diminishes; but here, if we are to believe Capt. Corson, the Charles F. Beebe, when a mile off, bore a point or a point and a half over his weather bow; and after that distance had been diminished to one or two hundred feet, she still bore a point and a half over the weather bow. The only explanation is, as in the case of the testimony of Capt. Taylor, that the witness mistook time and distance, and that the order hard a port followed immediately after the first order.

III.

The claimants' testimony as to the position of the Charles F. Beebe when she was first seen from the S. B. Wheeler, and what was thereupon done on board the S. B. Wheeler, and the consequences that followed, is so far inconsistent that it cannot be true.

1. We have seen that their testimony is that the wind was north-

west, and the course of the S. B. Wheeler east-north-east when the red light of the Charles F. Beebe was first seen about a mile off and a little on the starboard bow; that they then kept off a point, or a point and a half. The man at the wheel says a point and a half or two points, and this is the best evidence. Dep of Gibson, p. 46, int. 18.

Now, supposing the Charles F. Beebe was sailing as close-hauled as it was possible for any working vessel to sail (that is, within five points), with the wind northwest, her course would have been west by south, and would have varied only one point from being parallel with that of the S. B. Wheeler. But the man at the wheel of the Charles F. Beebe says that, although close-hauled on the wind, which was somewhat variable, her course was west by south, one half south; and this is the best evidence. Her course then varied only half a point from being parallel with that of the S. B. Wheeler. It follows that if the S. B. Wheeler was kept off a point and a half, or even a point, her new course diverged from that of the Charles F. Beebe. There could then have been no collision. It would have been impossible to bring the vessels so near together as the claimants say they were before the Charles F. Beebe changed her course.

But we have seen above that if the alleged first change of course was made at the distance alleged, it left the S. B. Wheeler still on a course that converged towards that on which the Charles F. Beebe was sailing

From all this, one of two things follows: either the S. B. Wheeler was not kept off when a mile, or any considerable distance from the Charles F. Beebe, as testified by the claimants' witnesses, or she was originally on a course which, if pursued, would have carried her far to windward of the Charles F. Beebe.

2. The master of the S. B. Wheeler testifies that when the vessels were about a mile apart, he kept off so that he brought the Charles F. Beebe about a point or a point and a half on his weather bow, that he made no further change until the vessels were within two hundred feet (three or four times the length of the C. F. B.) of each other, when the Charles F. Beebe began to keep off, and that she was then a point or a point and a half on his weather bow. Dep. of Corson, pp. 64, 65, ints. 19, 20, 21, 25, 29. The man at the wheel, Gibson, the only other man on deck in a position to know anything about it, says the same. Dep. of Gibson, pp. 45, 46, ints. 16–22, p. 48, cross-ints. 7–10. If this is true, the first keeping off of the S. B. Wheeler brought her upon a course that would certainly have brought her into collision with the Charles F. Beebe, if both vessels held their courses. The testimony that the Charles F Beebe would have passed clear to windward if she had not changed her course cannot be true.

3. Again, the Charles F. Beebe being, as the master of the S. B. Wheeler testifies, only a point, or a point and a half on the weather

bow of the S. B. Wheeler, and only three or four times her length distant, when she began to keep off, her bow must certainly have been to leeward of the S. B. Wheeler before the latter could be kept off, so that it is impossible that the S. B. Wheeler kept off to avoid her.

IV.

The Lookout Kept On The Two Vessels.

1. There was no suitable lookout kept on the S. B. Wheeler. According to the claimants' own testimony, the man appointed for a lookout, was, at and after the time, the Charles F. Beebe was first seen, walking fore and aft the deck, passing back so far as to be behind all the sails; and at the critical moment when it is alleged the Charles F. Beebe began to keep off, there was no man on the deck forward of the mainmast. Dep. of Fox (lookout), pp. 40, 41, ints. 25–30, p. 43, cross-ints. 17-24, p. 44, cross-ints. 27, 30. I shall have occasion to refer to this again further on.

2. At the trial below, it was claimed that the Charles F. Beebe had no sufficient lookout. The evidence is that a man was standing on the lookout, and that the officer of the deck, who was walking back and forward, came forward two or three minutes before the green light of the S B. Wheeler was seen, and that he remained forward and watched it, until by her sudden change of course, when a hundred, or a hundred and fifty feet from them, she opened her red light. Dep. of McLaughlin, p. 50. Dep. of Murray, p. 26, int. 3, ints. 10–12; p. 55, cross-ints. 24–28.

This would seem to show a sufficient lookout for a little fishing smack of forty-one tons; on which ordinarily at night the watch consists of only two persons.

But it was urged at the trial in the court below, that the lookout was not vigilant, because Murray said that the S. B. Wheeler was not seen until she was within three rods of the Charles F. Beebe.

It is impossible to say, how Murray's mistake came; but he was certainly mistaken unless both the other witnesses on the deck of the Charles F. Beebe are false. They estimate the distance at which they saw the green light of the S. B. Wheeler, at about a mile. Dep. of Scott, p. 11, ints. 10, 11. Dep. of McLaughlin, p. 50, int. 12. It is to be noticed that Murray's testimony was taken several months after the collision; that he had been in the meantime at sea (Dep. of Murray, pp. 29, 30, ints. 28, 29), and may have confused in his memory the distance at which the S. B. Wheeler was first seen with the distance at which she was when seen to be coming down upon the Charles F. Beebe: a more alarming and impressive sight.

If it is claimed that he differs from the other witnesses, because more truthful and conscientious than they, he certainly ought to have credit for truthfulness when he says, that when the order to put the wheel of the Charles F. Beebe, hard up was given, the S. B.

Wheeler was seen over the starboard bow, that is to windward. Dep. of Murray, p. 26, ints. 3–5.

3. It was also said by the claimants at the trial below, that McLaughlin was not a suitable person to have charge of the deck at such a time and place; that there should have been an officer in charge of the deck, while McLaughlin claimed only to be a boat header. Dep. of McLaughlin, p. 50, int. 2.

The answer to this is obvious. The question is one of qualification, not of name. He had had a very large experience as a seaman and an officer. Dep. of McLaughlin, p. 49, int. 1; pp. 53, 54, cross-ints 8–17.

His shipmates called him the "second mate," probably because they saw him doing the duties of that place, although he did not himself claim that title.

The Witnesses.

1. Ziba Taylor, a witness for the claimants, professes to have been in the neighborhood of the collision in a vessel called the Hannah P. Hand. His testimony, when he confines himself to facts, is, on the whole, favorable to the libellants, as I think appears above; but he undertakes to give certain opinions, which, upon his own showing, he had no means of forming. He says he first saw the Charles F. Beebe, "*nearly direct ahead*" of the S. B. Wheeler about five minutes before the collision; in a very short time, one or two minutes, she disappeared behind the sails of the S. B. Wheeler, and he saw her no more until after he saw the S. B. Wheeler keep off across his bows, — that is, until the instant of the collision. Dep. of Taylor, p. 35, int. 9.

With such opportunities for observation, he undertakes to give the opinions expressed in answer to ints. 10–15. Int. 15 is objected to, and the objection is insisted upon. The witness seems to evade a direct answer to int. 10.

The truth about this witness seems to be, that after the collision he fell in with the master of the S. B. Wheeler, heard his story, and adopted his theory of the case, and now gives his opinions, not from anything he saw or knew, but from what Capt. Corson told him.

2. Frederick W. Corson was master of the S. B. Wheeler, and of course deeply interested to justify what he did. The whole responsibility rests upon him. There are some things in his testimony which appear to justify the remark that what he says should be very carefully scrutinized. Thus he testifies (p. 68, cross-int. 67), that his man on the lookout, was keeping a "*good lookout*," when it appears on further examination that he did not know where on the deck he was at the time, or what he was doing. Dep. of Corson, p. 68, cross-ints. 66–72.

Again, he testifies to certain facts, important if they are true, but

cannot be certain he did not testify the reverse in the District Court. pp 69, 70, cross-ints. 83–91.

He testifies to some things that are in their nature improbable, and conflict with what is distinctly proved. Thus he says (p. 67, int. 54), that Capt. Maynard told him he was below at the time of the collision, and the man put the wheel the wrong way. Capt. Maynard denies this (p. 23, cross-ints. 11–17), and it certainly is improbable that he said it. If he was below, how could he know which way the wheel ought to be put? He would not be likely to make admissions against his own vessel when he did not know their truth.

He now testifies that he himself helped do what was done to the wheel (pp. 20, 21, ints. 8–17), and in this he is confirmed by the man at the wheel. Dep. of Scott, p. 11, ints. 14, 15.

3. At the trial in the court below, the claimants attacked the credibility of the libellants' witness McLaughlin, and the judge of the District Court seemed, from his opinion, to some extent, to discredit him, although he said he did not intend to charge him with perjury. The fact that the District Court has spoken slightingly of him, justifies me in asking special attention to the grounds on which he was discredited. They are thus stated in the opinion of the learned judge: "He narrates a conversation with Capt. Corson, which the latter denies, and which no one else affirms, though other persons were present, in which he asked the master where his lookout was; and the reply was that there were two men on the lookout forward, which McLaughlin says he at once denied, and pointed forward in proof of his denial. It appears to me highly improbable that any such conversation took place; for this among other reasons, that there was but one lookout forward, and the master has never before or since asserted that there were two."

If the question were merely whether this alleged conversation took place, the discussion would not be worth the time; but, in fact, the general credibility of one of the libellants' most important witnesses is involved. It is therefore submitted most respectfully, that the reasons given for not giving full faith to his testimony are not sufficient.

(1.) Capt. Corson does not now deny the substance of the conversation in relation to the lookouts, whatever he may have done in the District Court. In fact, he substantially admits it. Dep. of Corson, p. 67, int. 50. "Did you ever claim to have had two men on the lookout?" Ans. "Not outside of myself and one man; no sir; I did not." See also p. 66, int. 49.

(2.) The reason assigned "that there *was* but one lookout forward, and the master has never before or since asserted that there were two," assumes that Capt. Corson could not possibly, in the excitement, have spoken anything but simple truth, and that he did not include himself as one lookout.

(3.) Suppose Capt. Corson had squarely denied having said any-

thing of the kind; it would then have been but oath against oath. But with this difference that McLaughlin was testifying to an affirmative fact, about which he would not be mistaken; while the denial would have been of something which might have been forgotten.

We have seen that he said (p. 66, int. 49), "I don't remember having any conversation with McLaughlin at all." In a moment of so much excitement, it is probable a man may say many things which he does not afterwards remember.

(4.) The reason that "no one else affirms this conversation, though other persons were present," seems hardly sustained by the facts It does not appear that any one else was present at this part (which was the first part) of the conversation. Dep. of McLaughlin, p. 58, cross-ints. 66–68. Besides, the persons named by McLaughlin as within hearing of part of the conversation, had been examined a long time before McLaughlin had testified, and their attention was not drawn by any direct question which would bring out this talk if they had heard and remembered it. Strickland, the mate, is only asked for conversation that he had with Capt. Corson. Dep. of Strickland, p. 31, int. 14. Dep. of Scott, p. 12, int. 24. It is to be noticed also that both these witnesses did, in fact, hear what McLaughlin mentions as the latter part of the conversation with Corson, namely: Corson's statement that he kept away all he could without breaking his main boom. Dep. of McLaughlin, p. 52, int. 25; p. 59, cross-int. 81.

(5.) There is no inherent improbability that McLaughlin addressed this conversation to the master of the S. B. Wheeler. It is true they held different positions, but McLaughlin was in charge of the deck of the Charles F. Beebe, and the question which vessel was in fault, was a question between him and Corson; and it was perfectly natural that he should challenge its discussion the instant they met.

V.

Thus far the discussion has related to conflicting testimony. I have now to submit to the Court, that upon the claimants' own testimony the S. B. Wheeler was in fault.

1. A proper lookout was not kept on board her.

It seems a man was appointed for a lookout; that he reported the lights of a vessel, which they claim was the Charles F. Beebe, and then occupied himself in walking fore and aft the vessel. Dep. of Fox (lookout), pp. 40, 41, ints. 25–30; p. 43, cross-ints. 17–24. At the critical moment, when, as they say, the Charles F. Beebe began to keep off, he was at the break of the poop-deck; p. 44, cross-int. 27. The captain at this time was aft; p. 44, cross-int. 30. The only other man on deck we have seen was at the wheel. Dep. of Gibson, p. 45, int 8. There was no person forward of the mainmast. This is not such a lookout as the law requires.

"They (men placed on lookout) must be persons of suitable experience, properly stationed on the vessel, and actually and vigilantly employed in the performance of that duty. Proper lookouts are competent persons other than the master and helmsman, properly stationed for that purpose on the forward part of the vessel." The Ottawa, 3 Wall. 268, 273.

Schooner Catherine *v.* Dickinson, 17 How. 170.
Chamberlain *v.* Ward, 21 How. 548, 570.
New York and Balt. Trans. Co. *v.* The Phil. and Savannah Steam Nav. Co, 22 How. 461, 471.
Haney et al. *v* Balt. Steam Nav. Co., 23 How. 287, 292, 294.
The Carrol, 8 Wall, 302, 306.
The Genesee Chief, 12 How. 443, 462.
The Ariadne, 13 Wall. 475, 478.
The Blossom, Olcott, 188.
The Carlota, 4 Irish Jurist, 237 a.
The Mellona, 3 Wm. R. R. 10.

And especial vigilance on the part of the lookout was due when the other vessel had been sighted and was known to be approaching.

Thorp *v.* Hammond, 12 Wall. 408.
The Carlota, 4 Irish Jur. 237 a.

Here, then, are two vessels approaching each other, end on, or nearly so, at the rate of twelve hundred feet a minute. They are already within about two hundred feet of each other, and the lookout of the vessel, bound to give way, is walking backward and forward on the deck, and at this critical moment is aft the mainmast, at the break of the quarter deck; and her master having, as he says, kept off so as to bring the approaching vessel a point, or a point and a half on his weather bow, is looking out for other vessels, until he suddenly discovers there is danger of collision. Dep. of Corson, p. 64, ints. 20, 21; pp. 69, 70, cross-ints. 83–91.

As to distance, see Dep. of Corson, p. 64, int. 25. The answer puts it at sixty or seventy yards. Ans. p. 9, Art. 5.

The fact that, under these circumstances, the precaution of having a man forward was neglected shows the S. B. Wheeler to have been *prima facie* in fault It puts the burden upon her of proving that such neglect did not cause, or contribute to the collision.

Waring *v.* Clark, 5 How. 441, 465.
Schooner Lion, 1 Sprague, 40.
Clapp *v.* Young, 6 Law Rep. 117.
Bulloch *v.* Steamer Lamar, 8 Law Rep. 275.
The Emily, Olcott's Adm. 132.

In The Steamboat New York *v.* Rea, 18 How. 223, 225, it is stated in terms that the omission to have a proper lookout properly placed,

whose whole business it was to discern vessels ahead approaching, so as to give the earliest notice to those in charge of the navigation of the vessel, would be *prima facie* evidence of fault.

It cannot be made to appear that a vigilant lookout on the S. B. Wheeler would not have saved the collision; on the contrary it seems in the highest degree probable that it might have saved it. A man steadily watching the approaching vessel, would probably have sooner discovered that the approach of the vessels did not enlarge the angle at which, as they say, the Charles F. Beebe was seen on the starboard bow of the S. B. Wheeler. Dep. of Corson, pp. 64, 65, ints. 20, 29. Dep. of Gibson, pp. 45, 46, ints. 16–21; p. 48, cross-ints. 7–10. This fact would have shown an intelligent man that the two vessels were in fact sailing directly for each other. If their courses had been parallel or divergent, that angle would have opened as they approached each other. Nothing but the fact that their courses were so far convergent that if continued the vessels must collide, could explain the fact, that the angle did not enlarge as the distance decreased.

Again, a lookout vigilantly watching the light of the Charles F. Beebe from the forward deck, might have seen, when, as they allege, the Charles F. Beebe kept off; that the course of safety for the S. B. Wheeler was to hold her course. If, as the claimants allege, the Charles F. Beebe kept off first, it is certain from the way the vessels collided, that if the S. B. Wheeler had kept her course, she must have gone to windward of her. Seen, as they allege, only one or one and a half points on the windward bow of the S. B. Wheeler, a very slight turn from her course brought her bow to leeward of that of the S. B. Wheeler; and had not that vessel followed her up, she could not have touched her.

The case of the A. Denike decided in the first Circuit in May, 1868, illustrates strongly the duties of vessels in relation to keeping a vigilant lookout on the forward deck. The two vessels involved were the brig Clara F. Webster and the schooner A. Denike. The Court found that the two vessels were crossing; that the brig had the wind free and the schooner was close-hauled; that it was therefore the duty of the schooner to hold her course, and of the brig to keep out of her way; that the brig had suddenly changed her course and luffed across the bow of the schooner, and so caused the collision; and that she was therefore in fault. But it also appeared that when the brig's lights were first reported, the pilot of the schooner went forward, and watched the brig for some minutes, until he became satisfied that if the brig kept her course, she would pass in safety to leeward of the schooner; he then went aft, and soon heard from the lookout the report that the brig was changing her course. He then gave the order "hard up," but it was too late. The Court considered that the pilot should under the circumstances, have remained forward on the lookout and that if he had done so, he might probably have seen the change of the brig's course, in time to have avoided

the collision. And so the schooner was condemned for contributory negligence.

2. The claimants' testimony shows that the S. B. Wheeler was in fault, in not keeping off seasonably and sufficiently when, as they say, the red light of the Charles F. Beebe was first seen. Capt. Corson when he first sighted the red light of the Charles F. Beebe, saw that she was close-hauled on the wind on her starboard tack, and recognized and acted upon his obligation to keep out of her way. Dep. of Corson, p. 70, cross-int. 92, ints. 96, 97. Then he kept off so that he brought that light one or one and a half points on his weather bow. As I have shown above, he did not keep off enough to bring the vessels on parallel courses, but left them still converging, otherwise they could never have come into dangerous proximity.

It is not enough that the collision could not have been prevented at the moment, if it might have been by previous precautions.

Wakefield *v.* Steamer Governor, 1 Clifford, 93.
The Virgil, 7 Jur. 1174.

The Court may properly decree for the libellants for the above reasons, although they are not stated in the libel. They are drawn from the claimants' own testimony, and cannot therefore operate as a surprise to him. Indeed, the libellants could not set forth the claimants' neglect to keep a proper lookout, until they heard their testimony. The steamer Syracuse, 12 Wallace, 167.

3. Even it be true that the Charles F. Beebe kept off, when the way of safety and duty was to hold her course, it was not her fault, because, upon the claimants' own showing, the S. B. Wheeler had wrongfully come into dangerous proximity to her.

When the vessel bound to keep out of the way has come within two hundred feet, or sixty or seventy yards of the other, with that other bearing only one or one and a half points on her starboard bow, and the two vessels approaching at the rate of two hundred feet in ten seconds, it would seem to make a case of coming wrongfully into alarming and dangerous proximity, if it is possible to suppose one.

For, even if we suppose their courses to have been parellel, one point, at the distance of two hundred feet, would give less than forty feet between the lines on which the vessels are sailing. If they were forty feet wide they must collide. The persons in charge of the Charles F. Beebe might well suppose a collision inevitable.

They, as we have seen, estimated the distance at less than two hundred feet, when they changed their course, but I am now presenting the case wholly on the claimants' own testimony.

The Genesee Chief, 12 How. 443, 461.
Fretz *v.* Bull, 12 How. 466, 472.
Bently *v.* Coyne, 4 Wall. 509.
The Maria Martin, 12 Wall. 31.
The Jupiter, 1 Benedict, 536, 542.

JOHN C. DODGE, *for Libellants and Appellants.*

The regulations under which these exactions are made.

1st. The regulations of March 31, 1863:

"SEC. IX. A fee of twenty cents will be charged for each permit granted for purposes of trade under these regulations; and in addition thereto, the following fees shall be collected, viz: *for a permit to purchase or sell cotton or tobacco* within any place or section in a State heretofore declared in insurrection, commercial intercourse with which has been permitted by the Secretary of the Treasury, under the license of the President, as aforesaid, *and to transport the same therefrom to any place in the loyal States, four cents per pound of cotton, and two dollars per hogshead of tobacco;* and for a permit to transport any other goods and chattels, wares and merchandise, designed for sale, except supplies for officers and soldiers, shipped by sutlers to or from any such place or section, in any insurrectionary State, five per centum upon the invoice value thereof at the place of shipment."

2d. The regulations of September 11, 1863:

"XLII. The following fees are prescribed:

Fee for administering oath and certifying affidavit	10 cents.
Fee for each authority from agent	3 dolls.
Fee for certificate of local special agent	10 cents.
Fee for each permit for purpose of trade	20 cents.
Fee for each permit to purchase cotton in any insurrectionary district, and to transport the same to any loyal State, per pound	4 cents.
Fee for permit so to purchase and transport tobacco, per hhd	2 dolls.
Fee for permit so to purchase or to sell and transport to or from such district other products, goods, wares, or merchandise, five per centum on the sworn invoice value thereof at the place of shipment.	
Fee for each permit for individual, family, or plantation supplies, on every purchase over $20, and not over $50	5 cents.
Ditto on every purchase over $50, and not over $100.	10 cents.
Ditto on every purchase over $100	15 cents.

For permits for individual, family, or plantation supplies, not over $20 in amount, no charge is allowed, except revenue stamps on affidavits and certificates in districts under restriction, and no charges except 5 cents for permit, and 5 cents for each revenue stamp on affidavit and certificate, is allowed in States declared in insurrection. When purchases are less than five dollars, the permit officer may dispense with affidavits and certificates when no ground to suspect fraud or imposition appears."

Supreme Court of the United States.

IN ADMIRALTY.

HENRY C. ROGERS AND OTHERS, LIBELLANTS,
APPELLANTS.

v.

THE SCHOONER S. B. WHEELER.

WILLIAM S. HILLES AND OTHERS, CLAIMANTS,
APPELLEES.

BRIEF OF G. A. SOMERBY & L. S. DABNEY,
For Claimants.

ALFRED MUDGE & SON, PRINTERS, 34 SCHOOL STREET, BOSTON.

Supreme Court of the United States.

OCTOBER TERM, 1874.

THE S. B. WHEELER,

IN A CAUSE OF COLLISION.

HENRY C. ROGERS & OTHERS, LIBELLANTS AND APPELLANTS.

WM. S. HILLES & OTHERS, CLAIMANTS AND APPELLEES.

BRIEF FOR CLAIMANTS AND APPELLEES.

A. PLACE, TIME, WIND, &c.

Place of Collision. Vineyard Sound, off Tarpaulin Cove. One and a half or two miles from the northwestern shore, or about the middle of the sound.

Maynard, cross-ints. 6, 7, pp. 16, 17.
Murray, int. 2, p. 19.
Taylor, int. 3, p. 25.
Fox, int. 8, p. 29.
McLaughlin, int. 3. p. 36, cross-int. 36, p. 41.
Corson, ints. 5, 6, p. 45.

Time of Collision. Between twelve and one o'clock on the morning of July 18, 1871.

Scott, int. 4, p. 7.
Maynard, int. 4, p. 14.
Taylor, int. 3, p. 25.

Fox, int. 12, p. 29.
Gibson, int. 7, p. 33.
McLaughlin, int. 3, p. 36.
Corson, ints. 5, 6, 7, p. 45.

The circumstance, that the libellants' witnesses place the time somewhat later than those for the claimants, is explained by the fact, that the latter were all last from Philadelphia, and probably reckoned by Philadelphia time; while the former were coming from Seal Island, Nova Scotia, and had Nova Scotia time.

Lights. The witnesses from each vessel testify that their respective schooners were carrying the lights required by statute.

Night. It is alleged in the libel and admitted by the answer that the night was clear, and the witnesses on both sides testify that it was clear and starlight.

Wind. The wind was from northwest, veering to the northward. The witnesses on board the Wheeler testify that it veered to the northward.

Gibson, int. 11, p. 33.
Corson, int. 13, p. 46.

And in this they are corroborated by Capt. Taylor, a witness entirely without interest.

Taylor, int. 4, p. 25.
See also, *Scott*, int. 4, p. 7.

It was about a five-knot breeze. The witnesses differ some-

what in their estimate of the strength of the breeze; their respective statements of it are as follows: —

Beebe was sailing 6½ knots, the Wheeler 7 to 8.

Scott, int. 6, p. 71; cross-int. 38, p. 11.

Beebe was sailing 4 to 5 knots, the Wheeler 8 to 10.

Murray, cross-int. 11, p. 20; cross-int. 20, p. 21.

Beebe was sailing 7 knots.

Strickland, cross-int. 11, p. 24.

There was a 5 to 6 knot breeze.

Taylor, int. 5, p. 25.

About a 5 knot breeze.

Fox, int. 23, p. 29.

It was a 5 or 6 knot breeze. Wheeler was sailing 5 or 6 knots.

Gibson, int. 12, p. 33; cross-int. 1, p. 34.

It was a 4 to 5 knot breeze. Beebe was sailing 4 to 5 knots.

McLaughlin, int. 4, p. 36.

About a 5 knot breeze. 4 to 5.

Corson, int. 14, p. 46.

B. Taylor's Testimony.

The attention of the Court is respectfully invited to the testimony of Captain Taylor, examined for the claimants.

He has had an experience of twenty-three years at sea, during the last sixteen of which he has sailed almost wholly as master. And this experience has been gained in coasting schooners, on voyages "from the Gulf of Mexico to Maine."

Taylor, int. 1, p. 25; ints. 17, 18, p. 26; ints. 19, 20, p. 27.

He was a stranger to both the colliding schooners and the masters of them, and is the only witness produced on either side, who witnessed the collision as a wholly disinterested spectator and observer. He publicly narrated the circumstances of the collision in Boston, after his arrival there, before he had any conversation on the subject with either of the parties to this suit, and no witness has been called for the libellants to show, that the account thus given by him differed in any way from the account given in his deposition; although, if such had been the fact, there was ample opportunity to show it, for his deposition was taken before the trial in the District Court, and in his testimony he states the fact of his having given an account of the disaster, and names the place where, and the persons to whom he gave it.

Taylor, cross-ints. 5, 6, p. 27; ints. 21, 22, 23, p. 28.

Moreover, it appears that it was in consequence of hearing of this statement made by Captain Taylor, that his acquaintance was sought by the master of the Wheeler.

C. McLaughlin's Testimony.

The testimony of McLaughlin, on the other hand, is to be received with great caution. If the collision occurred through the fault of the Beebe, he is the man upon whom

the responsibility for it rests. In his testimony he narrates a conversation with the master of the Wheeler, which the latter entirely denies, and which, for reasons to be hereafter pointed out, it is respectfully submitted, he never had; and his whole evidence is more favorable to the libellants than that of any other witness, in such a manner and to such an extent as to draw from the District Judge, who heard him testify, the comment that he seemed "a little disposed to make up in testimony for any defects in seamanship." His eagerness, too, is shown on page 38, ints. 23, 24; p. 44, cross-int. 88.

D. Courses of the Wheeler and Beebe before either was seen from the other.

The Wheeler was steering east-northeast, with the wind free.

Fox, ints. 18–21, p. 29.
Gibson, int. 10, p. 33.

The libellants' witnesses seek to make out that the Beebe was obliged to sail as close to the wind as she could. For this object, McLaughlin, although the libel alleges the wind to have been northwest, ventures the statement that the wind veered to the westward of northwest, p. 41, ints. 41, 42, in which he is supported by no one, and is contradicted by all the claimants' witnesses, including Taylor. It is submitted that the following evidence shows that the Beebe could lay her course and probably did lay her course with a good full, and was under no necessity of sailing full-and-by, if she did so.

Corson states, that the proper course of the Beebe out of the sound from the place of collision, would be west-south-

west. This is not disputed, and an examination of the chart shows it to be true.

Corson, int. 37, p. 48.

This course is within six points of a northwest wind. All schooners can sail within five points of the wind, and some within four and a half. McLaughlin himself admits that the Beebe was able to steer west by south, p. 41, cross-int. 40, and this is a point to windward of her course out of the sound.

See also, *Fox*, int. 40, p. 30.

Captain Maynard, p. 16, cross-int. 5, testifies, that after beating all day he had got his vessel into such a position, that she could lay her course through the sound.

We have already shown that the Beebe was about in the middle of the sound. Maynard tacked about an hour before the collision, p. 14, int. 7; p. 17, cross-int. 8. Will anybody contend that he would have tacked in the middle of the sound instead of going close up to the windward shore, unless the wind was from such a direction, that when he tacked he had reached a position from which he could lay his course out of the sound with a good full? Besides, the wind had been drawing to the northward through the evening.

McLaughlin, cross-int. 37, p. 41.

Scott, who was at the wheel, swears the Beebe was heading west by south, half south, and had a good full.

Scott, int. 9, p. 7; cross-ints. 29, 30, p. 10.

Compare also, McLaughlin's statement, p. 37, int. 16, that no change was made in the Beebe's course, until that of the Wheeler had been changed. The statement is untrue, but it shows that the witness was aware of no reason why

the Beebe should not have kept a steady course, a thing that would have been impossible, if she were close-hauled on the wind, as McLaughlin himself substantially admits later, p. 41, cross-ints. 41, 42, 43.

E. The course of the Wheeler after discovery of the Beebe.

The port light of the Beebe was seen from the Wheeler by the proper person, the lookout, at the distance of a mile, nearly directly ahead, a little over the port bow, and was at once reported to the master, who was on deck in charge of his vessel.

Taylor, int. 9, p. 26; cross-int. 11, p. 27.
Fox, ints. 25–28, p. 29; int. 30, p. 30; cross-int. 13, p. 31.
Gibson, ints. 20, 21, p. 33.
Corson, ints. 17, 19, 20, p. 46.

When the red light of the Beebe was seen from the Wheeler, only two things were possible. Either the two vessels were sailing in exactly opposite directions, or the vessel bearing the light was sailing a trifle nearer to the wind than she would be if going in the opposite direction to the Wheeler. In either event, it was the duty of the Wheeler to leave her on her port side as they passed. If the latter were the case, she would pass to port of the Wheeler without any alteration in the Wheeler's course. If the former, then, perhaps, prudence would require the Wheeler to alter her course a little to starboard.

St. April 29, 1864, Art. 11, 13 Sts. 60.

1. The master of the Wheeler took instant measures to ensure passing on the side required by law; and these measures were adequate for the purpose in his own judgment, in the judgment of Captain Taylor, and in fact.

Taylor, ints. 9, 10, 11, 13, 14, 15, p. 26.
Fox, ints. 29, 31–34, 36, p. 30.
Gibson, ints. 16–19, p. 33; ints. 24, 29–33, p. 34.
Corson, ints. 20, 21, p. 46; ints. 30–32, 34, p. 47; cross-ints. 83, 87, p. 51.

2. The explanation of Taylor's statement, that the vessel bound to the westward luffed up to the westward immediately after he first saw her, is found in the alteration of the Wheeler's course. Taylor was sailing close behind the Wheeler, steering by her, p. 25, int. 8; pp. 27, 28, cross ints. 12, 13. The change in the relative positions of the vessels to his view would be the same, whether the Beebe luffed or the Wheeler fell off. Steering after the Wheeler he probably did not notice his compass, and assumes that the other vessel luffed. Perhaps both happened.

3. When the master of the Wheeler discovered that the Beebe had altered her course and was coming into his way, he took all the measures to avoid disaster which were possible.

He made the only practicable alteration in the course of his own vessel,

Taylor, ints. 11, 12, p. 26.
Fox, ints. 36, 37, p. 30.
Gibson, ints. 25, 27, 34, 35, p. 34.
Corson, int. 21, p. 46; ints. 57, 58, p. 49.

and directed those on the Beebe to do the only thing which would save them.

Corson, int. 22, p. 47.

The opinion of Taylor, p. 26, int. 15, as to the cause of the collision and the party in fault is competent. He is an expert, p. 25, int. 1; p. 26, ints. 16–18; p. 27, ints. 19, 20; and all the facts and circumstances on which an opinion as to the cause or fault must be based, were within his personal observation.

Seaver v. *Boston & Maine R. R.*, 14 Gray, 466.

It is respectfully submitted that this evidence establishes the fact that there was no fault on the part of the Wheeler.

4. Another proof that no fault was understood at the time to lie with the Wheeler, is found in the conduct of Captain Maynard. The master of a vessel recklessly run down by another in the manner now charged against the Wheeler, would have been likely to find some fault with those in charge of the vessel thus to blame; yet Maynard remained three hours on board the Wheeler and said nothing about it.

Maynard, cross-ints. 10–14, p. 17.

II.

On the part of the libellants, however, an attempt is made to fix the Wheeler with the blame of not having a sufficient lookout, based partly on the testimony of the libellants' witnesses, that the Wheeler had no lookout, and partly on an argument, support for which is sought, but, we submit, not found in the evidence of the claimants, that the lookout, which they testify to having, was insufficient.

1. The evidence that the Wheeler had no lookout, is contained in an insinuation and a pretended conversation. The insinuation is in the statement of Scott, Maynard and McLaughlin, that when they got on board the Wheeler they found no one forward.

Scott, int. 23, p. 8.
Maynard, int. 31, p. 16.
McLaughlin, int. 24, p. 38.

To this there are two answers, either of which is alone sufficient.

a. The lookout on the Wheeler, when collision became imminent, might well be excused from remaining on that portion of the vessel, which would take the full force of the coming crash.

b. At the time the Beebe's crew got onto the Wheeler, the lookout of the latter vessel had gone aft at the command of the captain to take in sail.

Strickland, 32, int. 15.
Corson, 66, ints. 40–44.

The conversation is the one which McLaughlin pretends he had with the master of the Wheeler, in which he represents himself as charging Captain Corson with the blame of the collision, attributing it to the lack of a lookout. Captain Corson, pp. 48, 49, ints. 46–55, distinctly and unequivocally denies having held any conversation with McLaughlin, and distinctly and unequivocally denies having held with McLaughlin, or any one else, any such conversation as McLaughlin relates; and the District Judge was satisfied, after hearing McLaughlin testify, that he never had any such conversation with Captain Corson, and so finds in his opinion. We respectfully submit that McLaughlin never had such a conversation with any one.

a. If he had it with any one it was with Captain Corson; for McLaughlin pointed him out, at the hearing in the District Court, as the man. *Opinion of Judge Lowell.* And he is positive that the conversation was with an officer of the Wheeler, and Captain Corson was the only officer on her deck.

McLaughlin, cross-ints. 2–7, pp. 38, 39.
Corson, int. 15, p. 46.

b. The alleged conversation embraces an absurd statement put into the mouth of Captain Corson, that he had two men on the lookout.

c. The character of the conversation, as McLaughlin states it, is such that none of the officers or crew of the Beebe would have failed to remember it, if they had heard it; yet none of them, when the opportunity was given them to relate it, showed the least recollection of such a conversation.

Scott, int. 24, p. 8.
Maynard, ints. 32, 36, p. 16.
Strickland, int. 14, p. 23.

And yet McLaughlin testifies that this conversation was held in the hearing of these very witnesses.

McLaughlin, cross-ints. 62–67, p. 42.

d. Compare, also, his doubt, and even denial, on cross-examination, of his having related, at the hearing in the District Court, the remark, which is, perhaps, the most important of the whole conversation as now stated by him.

McLaughlin, cross-ints. 87–93, p. 44.

But sufficient proof that the whole is an after-thought, both conversation and insinuation, is found in the entire absence

from the libel of all allegation that the Wheeler had no lookout.

2. The argument, that the Wheeler's lookout was not sufficient, is founded on the testimony that Fox, the man on the lookout, did not stand still in the same place; and *Chamberlain* v. *Ward*, 21 Howard, 548, 570, is cited. In that case a steamer was held in fault because no person on board of her was assigned to duty as a lookout at night; and there is strong intimation by the Court, that if any person had been charged with the duty of a lookout, the approaching propeller would have been earlier discovered and the collision avoided. But in the case at bar, the man Fox was assigned to duty on board the Wheeler exclusively as lookout.

Fox, int. 15, p. 29.
Gibson, int. 8, p. 33.
Corson, int. 15, p. 46.

To walk up and down may be a useful precaution against sleep and is consistent with complete vigilance. The testimony already referred to establishes that the Beebe was discovered from the Wheeler in ample season, and probably earlier than any one on the Beebe pretends to have discovered the Wheeler. It appears then that there was a man on duty as a lookout on the Wheeler, and, so far as the Beebe is concerned, he is shown to have been sufficient; and, therefore, *Chamberlain* v. *Ward* is not in point.

But the result is not changed if it be conceded that the Wheeler's lookout was not sufficient, or even that she had no lookout at all.

a. We have shown that the Beebe was discovered from the Wheeler at the distance of a mile at least.

b. There is unshaken testimony that from the time they thus discovered her, those navigating the Wheeler had the Beebe uninterruptedly in sight and in mind.

Fox, int. 36, p. 30.
Gibson, ints. 24, 27, 28, p. 34.
Corson, int. 21, p. 46; cross-ints. 86–88, p. 51.

Under these circumstances, if it could be shown that the Wheeler had had no lookout, it is clear that the collision did not occur because the Beebe was not seasonably seen from the Wheeler, and the objection, therefore, "is without any legal importance."

The Farragut, 10 Wallace, 334.
The Maria Martin, 12 Wallace, 31, 42, 44.

F. How did the Wheeler bear as seen from the Beebe while they were approaching each other, and before the Beebe changed her course.

The libellants contend that the Wheeler, as she approached the Beebe, was to windward of her; showed only her green light; was seen over the starboard or weather bow of the Beebe, and would have passed to windward of the Beebe had no change been made in the course of either. The great preponderance of evidence is against this view, and the District Judge found it to be unsupported.

1. The Hannah G. Hand was sailing close behind the

Wheeler, with the Wheeler about half a point on her weather or port bow.

Taylor, ints. 8, 9, pp. 25, 26.
Corson, int. 56, p. 49.

This must be taken to be true unless some fact or motive is shown to raise a doubt of the truth of Taylor's testimony.

Yet, with the Hannah G. Hand in that position, it is simply impossible for the Wheeler to be to windward of the Beebe as they approached, and in such a position as to show only her starboard lights to any one on the Beebe, without the Hannah G.'s lights being seen from the Beebe, as well as the Wheeler's, if either were discovered. But no such light, and no such vessel as the Hannah G. were discovered from the Beebe at all.

Scott, cross-int. 27, p. 11.
Murray, cross-ints. 22–27, p. 21.
McLaughlin, cross-int. 49, p. 41; cross-int. 52, p. 42.

If, however, the Wheeler was to leeward of the Beebe as they approached, as we contend, then the Hannah G. would have been hidden behind the Wheeler, and could not have been seen from the Beebe.

2. Again. Whether the wind blew from west or north of northwest, and particularly if it blew from west of northwest, sailing as the Beebe was in almost exactly the opposite direction to that which the Wheeler and the Hannah G. were steering, no course is possible to the Beebe, which admits of her being placed in a position to leeward of the extension of the line on which the Wheeler and Hannah G. were sailing when she was first discovered, which will not bring into view from the Wheeler and Hannah

G. the Beebe's starboard instead of her port light, or at least both lights.

But the testimony of all the witnesses shows that until the Beebe changed her course her port light, and only her port light, was seen from either the Hannah G. or the Wheeler.

3. A careful examination of the testimony reveals good grounds for believing that the Wheeler, for some reason, was not seen from the Beebe, until the vessels were quite close together, and then the Beebe had either already made a change in her course, or in confusion, occasioned by the sudden discovery of a vessel pretty close to him, McLaughlin or Scott made a fatal change in the Beebe's course, when law and safety both required the Beebe either to make no change in her course, or else to change it exactly to the reverse of the change, which was ordered by McLaughlin.

a. Murray, who was on the lookout, swears that the Wheeler was but three rods off when first seen from the Beebe, and that it was about two minutes from the time she was first seen until the collision. And it further appears from his testimony, that the Wheeler, when first seen from the Beebe, bore about a point on the starboard bow of the Beebe, and that McLaughlin ordered his wheel put hard up immediately upon discovering the Wheeler.

Murray, ints. 5, 7, p. 19; cross-int. 12, p. 20; cross-ints. 16, 18, 19, p. 21.

b. If this is true, two theories are possible. Assuming the relative positions of the two vessels in approaching each other to have been as stated by the claimants' witnesses, the Beebe's sails would have hidden the Wheeler from the man at the wheel, and from any one standing on the starboard bow; and a change of course by the man at the wheel

may suddenly have brought the Wheeler into sight from the starboard bow of the Beebe, in close proximity. Mc Laughlin swears he was standing on the starboard bow for ten minutes before the collision, p. 40, cross-ints. 27, 28; p. 41, cross-int. 44, and before that walking on the starboard side, p. 40, cross-ints. 22, 23, and Murray, the lookout, was standing by McLaughlin's side, while he stood on the starboard bow. Standing there, McLaughlin could not possibly know whether there had been any alteration in the course of the Beebe or not.

Another theory is, that McLaughlin took a look over the port bow, and then suddenly discovering the Wheeler not far off, lost his head, and ordered his wheel put to starboard, when it was his real duty either to hold his course, without change, or put his wheel to port.

Confusion and excitement on the part of those in charge of the Beebe is also evidenced by the contradiction between Murray and McLaughlin, as to which light of the Wheeler was in sight when McLaughlin gave his order, "hard up" McLaughlin, p. 37, int. 13, swears he then saw the Wheeler's red light; while from Murray's answers, p. 19, ints. 4–7; p. 20, cross-int. 12; p. 21, cross-int. 16, it appears that he saw the Wheeler's green light when this order was given by McLaughlin.

4. Scott also states the distance at which the Wheeler was first seen, and the time which afterwards elapsed before the collision; but the way in which he sticks to it, when the incompatibility of his statements is pointed out to him, must deprive his evidence on these points of all weight, because

it looks so much like reciting something which he fears to change.

Scott, cross-ints. 35–45, pp. 10, 11.

5. McLaughlin's statements in this particular are not very inconsistent with each other; but it has already been shown that his statements are to be received with great caution.

See also Corson's question to Maynard, as showing a dovbt whether his vessel was seen from the Beebe in proper time.

Maynard, cross-int. 15, p. 17.

6. Corson testifies, p. 49, int. 54, that the captain of the Beebe, after he came on board the Wheeler, told him, in explanation of how the collision occurred, that he was below, and his man put his wheel the wrong way. Maynard's "I don't think I did say something of that kind in substance to the captain of the Wheeler," p. 17, cross-int. 17, is not a very vigorous denial, while the statement is corroborated by the fact stated by the libellants' witnesses, that Maynard rushed to the wheel as soon as he came on deck.

Scott, int. 15, p. 8; cross-ints, 66–71, p. 12.
Maynard, int. 16, p 15.

Although the Beebe steered easy and minded her helm well.

Maynard, cross-ints. 18–22, p. 17.
Murray, cross-int. 10, p. 20.
Strickland, cross-int. 10, p. 24.
McLaughlin, cross-int. 98, p. 45.

7. Attention is also respectfully called to the circumstance, that the libel, art. 2, p. 2, puts the distance, at which

the Wheeler was first seen from the Beebe, at "something more than a mile," while none of the witnesses for the libellants venture to state it so far, Scott, p. 7, int. 11; p. 11, cross-int. 44, putting it at three quarters of a mile, and McLaughlin, p. 37, int. 12, at nearly a mile. The claimants witnesses saw the Beebe a mile off at least.

Taylor, cross-int. 11, p. 27.
Fox, int. 27, p. 29.
Gibson, int. 21, p. 33.
Corson, int. 19, p. 46.

G. Faults in the Beebe.

1. James McLaughlin was not a proper person to be in charge of the Beebe's deck at night, sailing in a thoroughfare like Vineyard Sound, not over four miles wide at the place where the collision happened, and crowded with vessels going in all directions.

Vineyard Sound is the track of all coasters between ports north and south of Cape Cod, is always full of vessels, and was so on this occasion.

Taylor, int. 5, p. 25.
Corson, ints. 35, 36, p. 48.
Scott, int. 25, p. 8.
Maynard, cross-ints. 32, 34, p. 18.
McLaughlin, cross-int. 49, p. 41.

In such a place there should be an officer on deck, and the libellants' witnesses show their appreciation of this, when they undertake to dignify McLaughlin with the title of second mate, or second officer.

Scott, cross-int. 19, p. 10.
Maynard, int. 5, p. 14.
Strickland, cross-int. 8, p. 24.

But it is well known that coasting and fishing schooners carry no second mate, and McLaughlin shows his knowledge of this, and his consciousness of the propriety of having an officer on deck, at such a time, in such a place, when he says that, as soon as he learned that the Wheeler's mate was below sick, he knew the man giving orders on her deck must be the master of the Wheeler.

McLaughlin, cross-int. 7, p. 39.

And McLaughlin himself testifies that in the Beebe he was a boat-header.

McLaughlin, int. 2, p. 36.

Of which the Beebe carried three.

McLaughlin, cross-int. 20, p. 40.

Any one of whom, it is submitted, might just as well have been in charge of the Beebe as McLaughlin.

And it seems that the master of the Beebe did not place complete reliance in McLaughlin's judgment and ability to manage her.

McLaughlin, cross-ints. 31, 32, p. 40.

2. The starboard bow was no place for James McLaughlin, as officer of the Beebe's deck, to be standing for eight or ten mintes with another vessel approaching.

McLaughlin, cross-ints. 27, 28, p. 40; cross-int. 44, p. 41.

He could not tell from that position whether his vessel was kept on her course and properly steered.

3. *If, however, we concede McLaughlin's story to be true, the fault of the collision is his.*

He says the Wheeler, when two lengths away from him, opened her red light, p. 37, ints. 13, 14, and hid her green one, p. 41, cross-ints. 47, 48; and it is to be remembered, that when this happened he was standing on the Beebe's starboard bow. It would be clear to any experienced seaman, who did not lose his presence of mind, that the only chance for the Beebe, under these circumstances, was in holding her course or luffing. But McLaughlin did exactly the reverse.

McLaughlin, int. 13, p. 37.

That the libellants felt the need of excuse for McLaughlin's management is evident, from their importing into the libel a strange vessel close to windward of the Wheeler, the presence of which is not only nowhere supported, but is even expressly denied by their own proofs.

McLaughlin, cross-ints. 50, 51, pp. 41, 42.

H. The argument of "dangerous proximity" for the vessel having the right of way.

The claim of the libellants is, that as their vessel was close-hauled and the Wheeler was sailing with the wind free, the law gives the Beebe the right of way. The law which gives a vessel the right of way annexes to the privilege a most important duty, namely: that the vessel having the right of way shall keep her course. Failure to do so has been excused in some cases, when the vessel not having the right of way has come into such close proximity as to make

collision inevitable. The vessel having the right of way may then change her course without blame.

Bentley v. *Coyne*, 4 Wallace, 509.
The Bark Jupiter, 1 Benedict, 536.

Probably in every case of collision, in which the vessel having the right of way is obliged to confess a change of course, excuse is sought for it, as a last resort, in the charge that the other vessel was coming so near as to make collision inevitable. And so it is in this case. Let us briefly examine it.

1. We observe that Judge Lowell gave the Beebe the benefit of the rule, in a form more liberal than is perhaps supported by any adjudged case, but considered that the Beebe's change of course was not, in fact, made under circumstances which, by this rule as he states it, constitute an excuse.

2. The libellants urge the very short time and distance which they say intervened between their change of course and the collision. But these estimates of time and distance are made from recollection of impressions obtained in the night time, and are a very uncertain and dangerous basis for the foundation of a judgment.

The Favorita, 18 Wallace, 598, 602.
The Emily, Olcott, 132, 135, 1 Blatchf. C. C. 236.

The libel, the answer, and all the witnesses on both sides, agree, that the two vessels would have passed in safety if neither had changed her course. Judge Lowell finds as a fact, and the finding is supported by the evidence, that the first change of course was made by the Beebe. It has been argued and, we think, established on the evidence, that the

Wheeler was at no time in the position in which the libellants seek to place her, namely: to windward of and bearing down upon the Beebe, until the Beebe changed her course and ran down across the Wheeler's bows. This is the position in which the libellants assert collision was inevitable. If it was, their own change of course had made it so, and the Wheeler could do nothing to avoid it.

3. It sometimes happens that the duty of keeping out of the way, or taking care of another having the right of way, compels the vessel charged with it to sacrifice some advantage of wind or to lose some sea room, and causes some delay or additional labor. In such a case the navigator is tempted to lose as little as possible, and to approach very close to the vessel, which has the right of way. The master of the Wheeler was under no such temptation. He had a fair wind and plenty of sea room. He saw the Beebe in season; he yielded her the right of way; he took measures to avoid her. He is an experienced seaman and master mariner; and it is to be presumed that he would shape his course so as to pass her at a distance, which a seaman of experience would consider safe and proper under the circumstances, having no motive to do otherwise. He was in no surprise or confusion, but was taking his measures with time and opportunity for deliberation and calm judgment. A master, under such circumstances, could not take his vessel so near to another as to make collision inevitable, unless he was grossly careless or did it from ill-will; and it will not be believed that he did so without clear and convincing proof.

4. Capt. Taylor, as we have argued, a witness without interest, swears that if neither vessel had changed her course, the Beebe would have gone to the windward of the Wheeler some distance.

Taylor, int. 10, p. 27.

This is an opinion which Taylor, as an experienced master mariner, is competent to give, and one which, in the discharge of his own duty, he was called upon to form before the collision. Because if the Wheeler was about to pass to windward of the Beebe, or so near as to make it uncertain whether she would pass to windward or to leeward, the position of Taylor's own vessel was such as to require him to take measures to avoid the Beebe.

I. Results.

The evidence shows the case of two sailing ships meeting end on, or nearly end on. The law required each to pass on the port side of the other, or, at the least, required the Beebe to hold her course, and the Wheeler to go to the right. The Wheeler did her utmost to comply with the law. The Beebe undertook to pass on the starboard side of the Wheeler. For this it is submitted and is found by *Judge Lowell* she shows no excuse, and hers is therefore the blame.

The Radama, 2 Clifford, 551.
The Richard R. Higgins, 1 Lowell's Dec. 290.

The District Judge finds as matters of fact, that the first change of course was made by the Beebe and caused the collision; that the Wheeler, before this change was made, was not coming too near to the Beebe; that McLaughlin was mistaken as to the course of the Wheeler, and erred in ordering his own helm to starboard; and that he did not have the conversation he pretends to have had with the master of the Wheeler. These findings, except that Corson and McLaughlin in the District Court testified orally, were based on the same evidence that is now presented. On

appeal the case was heard in the Circuit Court upon the identical evidence now before this Court, and the Circuit Court concurred in the decree of the District Court upon the merits and in the findings upon which that decree was based. This decree will be affirmed here, and the findings of fact, in which both Courts have thus concurred will be taken here to be correct, unless the appellants can satisfy this Court that the decree and the findings are erroneous.

The Baltimore, 8 Wallace, 377, 382.

G. A. Somerby
L. A. Sabin
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JUDGE LOWELL'S OPINION.

THE S. B. WHEELER.

NOVEMBER, 1871.

A collision occurred about half-past twelve or one o'clock at night, on the 18th of July, 1871, near Tarpaulin Cove, in the Vineyard Sound, between the schooners Charles F. Beebe and S. B. Wheeler, by which the former was sunk and totally lost. The Beebe was a fishing vessel of forty-two tons, new measurement, and was carrying a cargo or fare of fish from the coast of Nova Scotia to New York, and was sailing by the wind on the starboard tack. The night was clear, with a strong breeze from the northwest. The S. B. Wheeler was a schooner of two hundred and sixty-five tons, coal laden and proceeding towards Boston, with the wind about two points abaft her beam on the port side. Both vessels had the lights required by statute.

The libel alleged that the crew of the C. F. Beebe saw the green light of the other schooner something more than a mile off and over their starboard bow; that the Beebe kept her course until it became apparent that the Wheeler had changed and was still changing her course to starboard, so as to make a collision inevitable, and until she was within one hundred, or one hundred and fifty feet of the libellants' vessel, when the helm of the latter was put to starboard, as the only thing that could be done with any hope of escaping the collision or relieving the force of the blow. Under this change of helm she had fallen off about two

points, when the Wheeler struck her about amidships on the starboard side, and cut her in two. The answer set up, that a red light was seen from the Wheeler about a mile distant and on the port bow; that the master who was in charge of the deck kept his vessel off, until the light was two points on his port bow, and then ordered the helm to be steadied, and that afterwards, when said light was about sixty or seventy yards distant, the vessel bearing the light, and which proved to be the Beebe, suddenly fell away from the wind in the direction of the Wheeler; that the helm of the latter was immediately put hard a port, and she fell away; but the Beebe came down across her bows rendering a collision unavoidable, and the jib-boom of the Wheeler struck about at the fore rigging of the Beebe, and then the bow of the former struck the hull of the latter about amidships.

J. C. Bodge, for the libellants.
G. A. Somerby & *L. S. Dabney*, for the claimants.

LOWELL, J. These vessels were proceeding in opposite directions through the Vineyard Sound, and were meeting end on, or nearly so. It was the duty of both to port helm; but as a vessel close to the wind on the starboard tack cannot go far to the right without coming about and rendering herself unmanageable, the Beebe was bound, substantially, to keep her course, only hauling a little closer to the wind, if possible. I am speaking of the measures to be taken by each party when the other is discovered at a considerable distance. As a last resort, the starboard tacked vessel may sometimes be bound to luff into the wind, rather than be run down. Instead of porting, or holding on, the officer of the Beebe put his helm to starboard. This was an admitted deviation from rule, which the libel undertakes to excuse by

averring that a sudden and dangerous change of course b the Wheeler made instant action necessary, and that the Beebe could not go to the right, without danger from the Wheeler, and from another vessel, which was to the windward. None of these excuses is sufficient. The weight of evidence is, that the first change of course was on the part of the libellants' schooner, and that the other vessel saw it, and acted on it; and that there was no other vessel too near to windward. The libellants, however, insist that whether the Wheeler changed her course first, or not, she was coming so near the Beebe as to render a collision nearly, or quite inevitable, and is, therefore, responsible for the consequences, including any possible mistake of navigation, because it was her duty to give the libellants' vessel so wide a berth that no accident or mistake could occur.

An exception is undoubtedly admitted in favor of the vessel that is bound to keep her course, that if she holds it until a collision is inevitable, or even, perhaps, until to a competent and courageous seaman it would seem to be inevitable, she may then take such measures as appear to be necessary to save the lives of her crew. To bring this case within the exception, the libellants confidently rely on the very short time which elapsed after they starboarded, from which they infer that this change cannot account for the collision. The witnesses, on both sides, certainly put the vessels very near together when the change took place, and the argument is a strong one, that they do not allow time, or room for sufficient change to cause the collision. But it must be borne in mind that all these witnesses, on both sides, agree in the opinion that the change of course did cause the collision, though they do not agree which vessel changed first. The theory of each party in the pleadings and in the evidence is, that the sudden change of course of the other party caused the disaster; and I think it would be attributing too much force to

their estimation of time and distance to rely on them for sustaining a totally different cause, namely: that the vessels were already so near together, before any change was made, that a collision was inevitable. I have therefore endeavored to ascertain which vessel really made the first change, and am satisfied it was the Beebe. This change was made under a mistaken belief that the Wheeler had made a sudden departure from her course. That this mistake should be made seems to show a want of vigilance. By due attention McLaughlin ought to have known that the vessels were meeting end on, and that his duty was either to hold his course or go to the right. The other man who was forward with McLaughlin says the Wheeler was discovered at three rods distance. The master of the Wheeler says he hailed the Beebe to keep her luff. All this tends to show surprise and confusion, and upon the whole evidence, I believe the fact to be, that the change of the Beebe's course across the bows of the claimants' vessel, was the first and chief fault, and that it was done early enough to lead to the lamentable disaster which followed.

One theory for the libellants, and a plausible one, may be this: That the master of the Wheeler saw some other vessel at the distance of a mile, and made way for her, and in doing so came down towards the Beebe, but did not see her until he was so near that the disaster could not be avoided. This theory reconciles some of the discrepancies in the testimony; but it was so directly opposed to the plain and unshaken evidence for the claimants, that I am obliged to hold it unproved. To fit it even to the libellants' evidence, it is necessary to suppose not only that the master of the Wheeler made this mistake, but that when he discovered it he changed his course suddenly before the Beebe changed hers; whereas the reverse appears to be true.

McLaughlin, who acted as lookout and officer of the deck,

at the same time on board the Beebe, and upon whom the fault rests, if it rests with the libellants, seems a little disposed to make up in testimony for any defects of seamanship. He narrates a conversation with Captain Corson, which the latter denies, and which no one else affirms, though other persons were present, in which he asked the master where his lookout was; and the reply was that there were two men on the lookout forward, which McLaughlin says he at once denied, and pointed forward in proof of his denial. It appears to me highly improbable that any such conversation took place; for this, among other reasons, that there was but one lookout forward, and the master has never before or since asserted that there were two.

I do not intend to charge this witness with perjury, nor to deny that he may have had some such conversation with some one; but he distinctly stated in court, pointing to the master, that it was with him, and in that statement I think he was mistaken. I cannot doubt that he was mistaken in the course of the Wheeler, and in ordering his own helm to starboard.

In coming to the conclusion that this unfortunate order was the main and original cause of the collision, I bear in mind that when vessels are pursuing opposite courses, a slight change will often be enough to carry them clear, and I see no reason to doubt that if the libellants' vessel had kept her course, the change which the Wheeler is admitted to have made, would have cleared them, even if they could not have gone free by both holding their several courses, as I am inclined to think they would. It is very possible that the same result would have followed if the Wheeler had starboarded, when it was seen that the Beebe was crossing her bows; but in such an emergency, I cannot fix the blame upon him who has taken the regular and usual course, and exonerate one who has departed from it. I have not recapit-

ulated all the evidence; but I have considered it all, and my conclusion is, that the Charles F. Beebe was alone in fault.

Libel dismissed with costs.

A true copy.

Attest:

EDWARD DEXTER, *Clerk.*

OPINION OF MR. JUSTICE CLIFFORD.

Compensation is claimed in this case by the libellants for the total loss of the schooner Charles F. Beebe, valued in the libel at thirty-five hundred dollars, and for the loss of her cargo, consisting of fresh halibut, valued at one thousand dollars, and also for the loss of certain books and nautical instruments, which were on board the schooner, and for the loss of the clothing belonging to the officers and crew of the schooner, which was also on board at the time of the disaster, amounting in the whole as alleged in the libel to the sum of five thousand and fifty dollars. Service was made and the claimants appeared and filed an answer, in which they admit, that between twelve and one o'clock on the morning of the day alleged in the libel, a collision occurred between the two schooners named, and that the schooner of the libellants was sunk; they also admit that the place where the collision took place — eight miles northeasterly from Gay Head — is correctly stated in the libel, and that the wind was northwest as alleged by the libellants. Some other material facts are also admitted in the answer; as for example, that the night was clear, that the schooner of the libellants was sailing close-hauled on the wind on her starboard tack, and that the schooner of the respondents was sailing with the

wind free; and the evidence shows that each of the vessels had proper lookouts and that they showed the signal lights required by law. Concurring as the libel and answer do in these respects, it is safe to assume that those several matters are correctly stated in the pleadings. By the pleadings it also appears, that the schooner of the libellants, a vessel of about forty-one tons new measurement, was bound on a voyage from Nova Scotia to New York, and that the schooner of the claimants, a vessel of two hundred and sixty-four tons new measurement, was bound on a voyage from the port of Philadelphia to the port of Boston, laden with a cargo of coal; both vessels were in good repair, and were well manned and equipped. Beyond doubt when first seen by each other, they were approaching from opposite directions nearly end on, within the meaning of that phrase as employed in the sailing rules enacted by Congress; and it is equally clear that they were sufficiently distant at that time to have enabled each to have adopted the necessary precautions to have avoided a collision.

Testimony was taken on both sides in the District Court, and the District Court being of opinion that the schooner of the libellants was in fault, entered a decree for the respondents, and dismissed the libel with costs, whereupon the libellants appealed to this Court. Two additional depositions have been taken since the appeal, but the general aspect of the controversy is not changed from what it was in the Court where the libel was filed.

Widely different views are entertained by the parties, as to what occurred throughout the whole period which elapsed from the time the two vessels were seen by each other, to the time the collision took place. On the part of the libellants it is insisted that their schooner was to the leeward of the schooner of the claimants, and that she was proceeding on her voyage close-hauled on the wind: that those in charge

of her, first saw the schooner of the claimants, a point, or a point and a half, on her starboard bow; that the vessels were at that time, a mile apart; that both vessels kept their course until they approached within about one hundred and fifty feet of each other, when those in charge of the libellants' schooner perceived that the schooner of the claimants had changed her course, and was coming down upon their vessel; that it then being impossible for the vessel of the libellants to get to the windward of the vessel of the claimants, those in charge of the libellants' vessel put the wheel hard up, as the only thing which they could do with any hope of avoiding a collision, but that the precaution was unsuccessful, as the vessel of the ~~complainants~~ also changed her course and fell off at the same time. Several of those statements are denied by the claimants, as for example, they insist that the vessel of the libellants was to the windward of their vessel, when their lookout descried the red light of the libellants' schooner nearly a mile ahead, and that the master immediately gave the order to keep the vessel off a little, and that the order was obeyed. Assuming that the schooner of the libellants was to the windward, the order was a proper one, as it gave the approaching vessel a wider berth, and it cannot be doubted if the vessel of the claimants was to the leeward, that the collision would have been avoided if the vessel of the libellants had not changed her course; but the claimants allege that she kept her course until the two vessels were within a hundred and fifty feet of each other, when she suddenly ported her helm and fell off to leeward. Each party claims to have been to the leeward and charges that the other was so far to the windward, that if there had been no change of course the two vessels would have passed each other in safety; and no doubt is entertained that both parties are right in supposing that the collision would have been avoided if no change had been made by either after the execution of the first order given by

the master of the claimants' vessel. Where two sailing ships are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both should be put to port so that each may pass on the port side of the other. Such is the general rule as established by the Act of Congress, and the decisions of the Supreme Court. but in obeying and construing that rule as well as several others, due regard must be had to all dangers of navigation, and to any special circumstances which may exist in any particular case, rendering a departure from this rule necessary in order to avoid immediate danger. Attempt is made to bring the case within those exceptional principles, but the evidence taken as a whole disproves every such theory, and shows that the vessel of the libellants was to the windward of the vessel of the claimants, and that the conclusion of the District Court was correct. Concurring as I do with the District Judge, both in his conclusion and in the reasons assigned in its support, it does not seem necessary to analyze the testimony, or to enter more fully into a discussion of the subject.

Decree affirmed with costs.

UNITED STATES OF AMERICA,
MASSACHUSETTS DISTRICT.

I, Alexander H. Trowbridge, Deputy Clerk of the Circuit Court of the United States for the First Circuit and District of Massachusetts, certify that the foregoing is a true copy of the opinion of Court, delivered June 14, 1872, in the cause of Henry C. Rogers et al., Libellants and Appellants, *v.* The Schooner S. B. Wheeler, William S Hilles, Claimant.

Witness my hand and seal of said Court at Boston,
[SEAL] in said District, this twenty-first day of September, A. D. 1874.

ALEX. W. TROWBRIDGE.
Deputy Clerk.